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THE LIFE OF LORD DARLING

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THE RT. HON. LORD DARLING

From the portrait by Aidan Savage

THE LIFE OF LORD DARLING

By
DEREK WALKER-SMITH

FOREWORD BY
The Rt. Hon. the Viscount Hailsham
Lord Chancellor of Great Britain

With 10 half-tone illustrations



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FOREWORD

By

Viscount Hailsham, Lord Chancellor of Great Britain

CHARLES DARLING became a Judge in 1897, and, although he resigned his Judgeship in 1924, he continued from time to time to exercise judicial functions, and sat in the King's Bench in 1931. This long period of judicial life covered and exceeded the whole of my time at the Bar. When I was called, the storm which had attended his elevation had died down, and he was in process of growing into the legendary figure which he subsequently became.

The author of this book, with an exaggeration pardonable and indeed laudable in a biographer, says that if Darling had deserted the law for literature we should "have lost a great Judge." A Judge to deserve the title of "great" should possess deep learning, a firm grasp of legal principle, and a capacity beyond the common for apprehending and marshalling complicated facts. Darling would have been the last man in the world to claim for himself the possession of any of these qualities or attributes. He had others which are as necessary for the due discharge of the judicial function. He was a kindly gentleman, a lover of England and of the life and pursuits of the English countryside, with a wide general culture, great industry, complete impartiality on the Bench, a dignified bearing, and a complete control both of his temper and of himself. As adornments to the office, he possessed a very pretty wit and a strong sense of humour. Public opinion at the time of his appointment probably did not credit him with some of these accomplishments, and probably, and even until the end, few realised his great capacity for taking pains, his earnest desire to do right, and his respect for the office which he held. In the public eye he was principally famous for his witty tongue. Perhaps, like many wits, he suffered in reputation, and not only among over-serious people, because his mind was so quick and because he took so obvious a delight in the exercise of his nimble tongue. These outward displays concealed his more solid qualities. In the same way his earlier literary productions—*Scintillæ Juris* and *Meditations in the Tearoom*—fixed his place in literature, though the verses quoted on the last page of this book indicate that, in this also, he to some extent was the victim of his own facility, and that had he found it necessary to labour he was capable of weightier things.

Beyond all this, and underneath all this, Darling's general view

of life was none the less serious because it found expression in light sayings. Mr. Walker-Smith rightly lays stress upon the strong Puritan strain which endured with him throughout his life. He was a charming companion and an admirable talker ; but, even in a profession which deals frequently with the harsher and coarser sides of life and is inclined in social moments to speech which is vigorous and unrestrained, he demanded of others, as of himself, a respect and a reticence characteristic of an earlier age. Furthermore, as a politician he expressed himself sometimes wittily, sometimes pugnaciously, but he was not in politics for amusement, though politics amused him ; he felt deeply, and even passionately, on the issues of his day. When he had ascended the Bench, and after he had left it and reached the House of Lords, he took a constant interest in legal reform. He was an early advocate of the change in the law which enabled a prisoner to give evidence on his own trial. Late in life he did all that lay within the power of a Judge to abolish the presumption that a wife charged with a criminal offence in conjunction with her husband acted under his coercion. These are only instances of his long-sustained interest in the development of criminal law.

By the time that he retired he had become as it were a national possession. A man does not live to his age, and hold for so many years office in the public eye, and gather in the course of his career to so great an extent the public interest and affection, without possessing exceptional personality. And the affection felt for him by the public at large was more than equalled for him by the feelings entertained by his friends. He lived a long and, in spite of the heavy blows which he sustained from fate in the early deaths of his wife and of his only son, a happy life. Towards its close he looked forward to the end with courage, but with no morbid desire to be gone. After the illness and the accident which he suffered in his last few years, he jested about them as if they had happened to another, though he was never heard to jest or joke about another's misfortunes. He leaves behind him the memory of an English gentleman, who, doing nothing common or mean in his search for distinction, did not shrink from the high office which came to him, and endeavoured to discharge its duties in the spirit of those distinguished men who had sat before him in the Court of King's Bench, and as an example to those who shall come after.

AUTHOR'S PREFACE

In writing the life of a man so recently deceased as the first Lord Darling of Langham, one is necessarily indebted to many who knew him or came in contact with him in the Courts. I cannot hope to express my thanks individually to all to whom thanks are due in respect of this book. But I should be ungenerous indeed if I did not place on record my feelings of gratitude to Miss Diana Darling. This book was begun in the lifetime of Lord Darling, but after his death she was the person best equipped to assist an author in his endeavour to see that the book was not unworthy of its subject. I should like to thank her for the information about Lord Darling which she gave me or placed at my disposal, for the assistance given me in the choice of illustrations, for putting me in contact with people who knew Lord Darling and generally for her helpful and sympathetic attitude to this book.

I should like to express my thanks for information received or help given, to Lord Arthur Butler, Admiral Sir George King-Hall, Mr. St. John Field, K.C., Sir Gerald Hurst, K.C., Sir Harold Morris, K.C., Mr. Maurice Healy, K.C., Mr. A. S. Comyns Carr, K.C., Mr. Barrington-Ward, K.C., Sir Cecil Levita, Mr. Wedderburn, Mr. Davey, Mr. Francis Pearson, Mr. F. W. Orr, and Mr. Benjamin, and to Mr. Philip Guedalla for a very helpful suggestion.

My thanks are also due to the Rt. Hon. Winston Churchill, the Duke of Beaufort, the Earl of Halsbury, the Hon. S. O. Henn-Collins, K.C., Mr. Gerald Russell, Mr. G. M. Gathorne-Hardy and Miss Eleanor Shackleton, for permission to reproduce letters.

To Mr. Sturgess, Librarian of the Middle Temple, and Mr. Hewitt, Assistant Librarian, my thanks are due for their courtesy and helpfulness.

Finally, but by no means least, I must express my great gratitude to Miss Diana Black and Mr. Roger Allen, without whose invaluable assistance in the collection, analysis and arrangement of the material which goes to the making of this book, it could have appeared neither in its present form nor at the present time.

My thanks are also due to Mr. Aidan Savage for permission to reproduce his portrait of Lord Darling; and to the Honourable Mrs. Keppel Pulteney, to Miss Sankey, and to the Honourable Mrs. Eustace Hills for their kind loan of photographs.

DEREK WALKER-SMITH.

Temple, 1938.

CONTENTS

CHAPTER	TITLE	PAGE
I.	The Man He Was	1
II.	The Background of Childhood	4
III.	Introduction to Law.	10
IV.	Journalism and Circuit Life	20
V.	The Oxford Circuit	31
VI.	Entry into Politics	48
VII.	Darling M.P.	60
VIII.	Darling Q.C.: Breach of Promise and Defamation	76
IX.	A Much Criticised Appointment	91
X.	Tastes and Recreations	99
XI.	Early Judicial Cases: The Voice of Criticism Again	115
XII.	Cases Grave and Gay	125
XIII.	Enter Bottomley	136
XIV.	Was Steinie Morrison a Murderer?	142
XV.	The Suffragette Case	151
XVI.	Lord Alfred Douglas and Mr. Robert Sievier	159
XVII.	Darling and the War	177
XVIII.	The Romney Picture Case	186
XIX.	War-time Treason and Murder	195
XX.	Pemberton-Billing and the Black Book	204
XXI.	The Mond Libel Case	226
XXII.	Darling after the War	239
XXIII.	Exit Bottomley	249

XXIV.	Armstrong Poisoning Case	259
XXV.	Husbands and Wives in Court	267
XXVI.	Retirement and Return; the Mr. A. Case	276
XXVII.	Darling as Judge and Wit	287
XXVIII.	The Last Assize	301
	Index	309

ILLUSTRATIONS

The Rt. Hon. Lord Darling	*Frontispiece*
	facing page
" Little Darling," *Vanity Fair* cartoon	20
Lady Darling	52
Charles Darling, Q.C.	84
Lady Cross Lodge, Brockenhurst	100
" Judicial Light Weight," *Vanity Fair* cartoon	132
Field-Marshal Sir William Robertson and Lord Darling share a joke	180
Lord Darling taking his morning ride in the Row	180
Mr. Justice Darling	244

CHAPTER I

THE MAN HE WAS

"WHEN I was a boy I was very delicate and was always seeing doctors, who said that with luck I might grow up. I did grow up, and I am now eighty-six."

So spoke Lord Darling to me in the last year of his life.

Two facts of great importance in considering the life of Darling emerge from this remark. First, there is the great length of the period of his active life; and secondly, there is the fact that it was entirely unexpected. His long life was crowded with great success. He was a Queen's Counsel and a well-known Member of Parliament before he was forty. He was a Judge before he was fifty. He served as a Judge for over a quarter of a century, and for some years acted for the Lord Chief Justice. He was the first puisne Judge to be made a Privy Councillor while still active on the Bench. On his retirement he was made a peer.

He might have done all this and remained comparatively unknown outside the circles of the Law. But, in addition, his name was a household word wherever the English language was spoken, and even beyond. This was a quantum of achievement sufficient to satisfy the most exacting standards of the generation into which he was born, a generation inoculated with the doctrine of Manchester, hard, virile and narrow, which taught that man's task was to better himself and let the weak go to the wall.

But in Darling's case his success seems strangely irrelevant. Most of the great figures of his time, who achieved success in Law and politics, can be assessed only in terms of their success. The first Lord Birkenhead, for instance, openly proclaimed himself as the apostle of glittering prizes, while the first Lord Reading cloaked a no-less vaulting ambition with the habit of decent deprecation. But Darling was not ambitious in the same sense. He entered the Law with no idea of becoming a Judge, and was prompted

less by a desire for the rewards than for the leisure and independence which practice at the Bar sometimes affords. Apart from his own temperament, this was dictated by the particular circumstances of his case: if it is doubtful whether one will reach adult life there is little point in nursing grandiose ambitions with regard to it. In Darling's case the delicateness of his childhood made impossible the driving ambition generally associated with successful lawyers: if one is not certain of surviving one's childhood, ambition becomes too speculative to be worth while. It was, therefore, in the nature of a paradox that this unambitious young man, who became a barrister because he did not want to work in an office, should forge ahead of his contemporaries to become the most famous Judge of his time.

A similar paradox invaded Darling's career as a wit. He had a natural quality of exquisite and rather fragile disdain, which scorned consciously to appeal to a wide public. He disliked illiteracy and philistinism, and addressed his wit and his writings primarily to those who had the culture to appreciate them; but, just as the unambitious young man became a Judge, the eclectic epigrammatist, who refused to adapt his wit to a less cultured age, saw it become the perpetual enjoyment of that wider public which he had not consciously courted.

Though born in the middle of the nineteenth century, Darling was eighteenth-century in his outlook and his composition. He had the admirable versatility of achievement and catholicity of taste which was the hall-mark of the great spirits of that age. He was a man of wit, taste, culture and real kindliness. To him the living of life was inevitably of more importance than the achievement of success, the method of travel as deserving of attention as the destination.

Such an attitude to life was helped by a freedom from economic care. In the early thirties Darling inherited comfortable private means, and previous to that the generosity of the cousin whose heir he was kept him free from anxiety. Darling, therefore, unlike many who follow the Law, never had to face the threat of poverty or hardship. This agreeable situation undoubtedly lent itself to a cultivation of life in its fuller aspects. But it was this which lent that slight air of unreality to portions of his life with which the careful observer cannot help being struck. This was

especially apparent in his writings. He wrote cleverly, but as an author he never graduated beyond the status of dilettante. It is very possible that if he had been differently circumstanced financially, he might have contributed quite considerably to the literature of the country in that lighter vein in which he was always more successful than in his more pretentious efforts. As his practice at the Bar was not especially lucrative, it is quite possible that, had he been dependent for a livelihood on his own earnings, he might have deserted the Law for literature. In that case England would have lost a great Judge, but might well have been compensated by a very considerable writer. As it was, however, though Darling wrote many agreeable trifles, the literary side of him never reached full and mature expression. Nevertheless, it remained an integral part of him, and, in following his life, one can see the shadow of that other Darling walking in the statelier footsteps of the Judge.

Circumstanced as he was, however, Darling followed the well-worn path of politics and the Law; but he followed it in a novel way. He was able to indulge his taste for living a full and varied life. Much of his interest in literature, art, and conversation took its colour from his French ancestry. But if he had the tastes of a Frenchman, he had the qualities and instincts of an Englishman. His sound judgment, keen common sense, and robust prejudices were basically English; so, too, was his love of the countryside, and the strain of puritanism which, rather unexpectedly, was one of his foremost characteristics. He was devoted to the traditions and institutions of his country, and a notable patriot. He lived into an age when loose thinking and sentimentalism became increasingly the fashion, and, like his friend Lord Carson, served to remind it of the happier fashion of an earlier age.

His story is the story of one who became a great institution without ceasing to be a lovable man.

CHAPTER II

THE BACKGROUND OF CHILDHOOD

CHARLES DARLING was born at the Abbey House, Colchester, in Essex, on December 6, 1849. He was not the first of that name, though the first to be born in England. His grandfather, Charles Darling, was a lowland Scotsman from East Lothian. He was a pure-born Scotsman of yeoman stock and married a pure-bred Scots girl, Janet, daughter of James Traill, from Dirleton, not far from his native Haddington.

Charles and Janet Darling begot a large family, of whom the youngest was a boy named Charles, after his father. As the youngest son of a Scots family, not too well endowed, he inevitably turned his steps in the traditional direction, to the more prosperous country South of the Border. His upbringing was in land management. His first position was at Kew Gardens, but from this he graduated to the open country and held positions in Hampshire and Dorset, where he made the acquaintance of the yeoman family of John Tizard, of Huguenot extraction, his forebears having settled in Dorchester. John Tizard had a daughter Sarah, who was pretty, petite and vivacious. She became Lord Darling's mother.

Charles Darling the second married Sarah Tizard in March, 1849. She was quite a young girl, but he was then in his forty-third year. Almost immediately after the wedding the newly-married pair left Dorset for Essex, where Darling had been appointed land-steward, as he called it in the Scottish phrase, of the extensive Essex estates of a member of the Baring family. They went to live at the Abbey House, Colchester, a pleasant house with an ample garden. Here the future Lord Darling was born, the eldest child of the family.

Charles Darling the third did not remain an only child for long; he was soon joined by a brother and sister. The brother was named William Littel (with the accent on the second syllable),

and on that account, by an obvious association of ideas, was always addressed and referred to as Tell. In later years he settled in the Beaufort country, where hunting was his main preoccupation ; but, unlike his elder brother, he was not blessed with a long life and died in the 1890s. His sister May, on the other hand, who was born three years later than Charles and who married John Rose, the former Metropolitan Police Court Magistrate, is happily still alive at the time of writing.

It was very fortunate for young Charles Darling that he was not an only child, for, if he had been, he must have been left more to his own resources than he was. The circumstances of his health naturally cut him off from much of the communal life of play and make-believe usual to children of that age. Indeed, the story of his childhood is easily to be inferred from the remark quoted at the beginning of the preceding chapter. He was delicate, and therefore could not go to school or play games ; not that he had any desire to play games. But he was also prohibited from contact with other children, and the continuity of his life was frequently interrupted by illness. It followed that he was thrown to a large extent upon his own resources. Fortunately he had by nature wide resources within himself and these he was able to develop. He had also the affectionate companionship of a very loving mother. Perhaps it was because he was the eldest ; perhaps because he was delicate ; perhaps just because he was himself ; but at any rate he was his mother's favourite, and her life, and the family life, especially after her husband's early death, centred about him. Consequently, he did not give way to melancholy, and his childhood was not the unhappy thing that the childhood of the great so often seems to be.

It was, however, uneventful. In early years his existence was bounded in the main by the four walls of the Abbey House and the extent of its garden. There were occasions, however, when he went out into the world, and on one of these he experienced the thrill of meeting and talking to the soldiers who were returning from the Crimea. This is the earliest memory which detached itself from the routine of childhood.

The soldiers were returning to the camp recently established at Colchester. When Charles Darling senior arrived in Colchester there was no camp, and its establishment had an important effect upon the Darling family, for the land on which lay their house

was required for it. They did not, however, move very far, as Darling still retained his post as land-steward. The place chosen for their new residence was Langham Hall, in the village of Langham, seven miles from Colchester. Langham is, of course, a considerably smaller place than Colchester, but it was then and remains, despite the ravages of the twentieth century, a charming rural village. Here young Darling spent those years of childhood when lasting impressions come readily to the mind and sensibilities ; and it was this sentimental association of Langham with his childhood which caused him to take his title from it, though it was not his birthplace, nor his residence, nor the home of his fathers.

At Langham his life proceeded on lines similar to those at Colchester, but more extended. He learnt early to ride a horse, and opportunities for this exercise were unlimited. He indulged them to the full when health permitted ; and the love of horses remained an enduring passion into old age. It was, besides, his best method of exploring the surrounding country, for he was not then, and never became, a great walker : " I did not like walking," he said, " unless I had to."

Meanwhile his education proceeded, though not on the standardised routine lines which it would no doubt have followed if he had been a normally healthy boy. He did, for a time, attend the Colchester Grammar School, but it was soon found necessary to abandon the experiment and with it the only course of regular schooling he ever received. To this he may very well owe the breadth of culture that was the background of his life. For lessons he went daily to an old man in the village, who gave him the rudiments of a classical education. His preceptor's attainments, it is true, were not sufficient to enable him to instruct his pupil in Greek, which Darling never learnt ; but the grounding in Latin was thorough after the fashion of the times, and Darling acquired a good working knowledge of the language. Modern languages had to wait until travel and wider contacts provided the opportunities for their study.

But the foundations of his culture were laid by his own reading, desultory in the sense that it was unplanned and undictated, but wide, varied and personal. Like many other boys he devoured the works of Walter Scott and other writers of romantic fiction ; and like many other men he would have been unable subsequently to

repeat the process. Later on, however, his reading took on a more individual taste and in his 'teens he started reading Sterne, whose witty, discursive, quizzical style his own writings were much to resemble.

In these surroundings and in these pursuits Darling might have expected to grow to manhood. But in 1862 the even, pleasant monotony of life at Langham was suddenly shattered forever by the removal of its head. The unexpected death, at the early age of fifty-six, of Charles Darling senior, whose healthy life and strong constitution should have entitled him to many years, was not only a great grief to his family but a severe blow in the material sense, as it necessitated leaving Langham Hall and the country they had grown to know and love. But for Darling, himself, the effect was mitigated by the affectionate interest of a relative.

This gentleman was a cousin, but of a senior generation, and was distinguished by the classical name of Menelaus. He did not, however, adopt the pronunciation of the warrior husband of the fair Helen, but contented himself with the Anglicised " Manylaws," which was perhaps more suitable for a substantial business man. He was the son of the eldest daughter of Charles and Janet Darling of Haddington, whose youngest child was Darling's father, and was therefore Darling's first cousin, though only three years younger than his father. Mr. Menelaus lived at Dowlais in South Wales, where he was a well-known local figure, and held a responsible position in Guest, Keen, and Nettlefold, the famous Midland ironmasters.

He was a business acquaintance of, and on terms of some friendship with, Alfred Krupp, founder and head of the famous German firm, and Darling received from Menelaus and had in his possession until his death a letter written in English from Krupp to Menelaus.

He was a rich man and a widower, and on their father's death he extended the hospitality of his house to Darling and his younger brother Tell. To Dowlais, therefore, Charles duly repaired, and it became his home for some years. Life there was uneventful, but Menelaus was a cultured man who did much to stimulate and encourage the lad's growing taste for books and pictures. In furtherance of this he gave him opportunities which he could not otherwise have had of seeing at first hand the masterpieces of Europe. One year he took him to Rome, by which Darling was

greatly impressed. But, though he became a great lover of Italy and made frequent visits in later life to Venice and Florence, he did not revisit the capital until he went there with his younger daughter in 1928. The Romans were amazed, on this occasion, that anybody who had once had the good fortune to visit their beautiful city could voluntarily have let sixty years elapse before doing so again, and felt it must be a manifestation of the inexplicable English sense of humour.

More prolonged was the visit he made to France for the purpose of learning the language. He stayed there for some months with a French family, and received instruction daily from an old man who had previously been tutor to the Russian nobility. Whatever his success with them, in Darling the old Frenchman found an apt and willing pupil, who was genuinely interested in France, its language and its literature. It was then that he started the habit of extensive reading of French literature that remained with him through his life, and he was able to unite to it the rarer accomplishment of writing French with facility in verse or prose.

At the age of nineteen Darling returned from France. He had grown up. It may have been through luck, as the doctors suggested, or perhaps through their skill. Whatever the reason, he had grown up. He had not had the conventional education nor the ordinary contacts, but his mind had been widened by travel, cultivated by reading, and deepened by the reflection his detached upbringing promoted. He had, too, known sorrow, solitude, disappointment and ill-health. He was, in short, admirably equipped both for the quiet, eclectic enjoyment of life and for a philosophic fortitude to meet its unkindnesses.

As yet there was no indication as to what special course his life was to follow. He was not an ambitious young man, dreaming of Downing Street or the Woolsack. It was not natural that he should be. Ill health is a poor spur to ambition, and plans for the future assume less importance when the future itself is problematical. But it was now clear that there was to be a future, and the question had to be decided what that future was to be. As Darling himself was without definite ideas or fixed ambitions, the decision naturally lay with Menelaus. He thought the matter over and came to the conclusion that his young cousin's nimble mind and intellectual precocity would serve him in the Law. It

did not, however, occur to him to send the frail and delicate young man into the uncharted hurly-burly of the Bar. So he was articled to a provincial solicitor, and went to take up his residence and serve his legal apprenticeship in the city of Birmingham, as articled clerk to the solicitor's firm of Messrs. Hawkes and Weekes.

CHAPTER III

INTRODUCTION TO LAW

IN 1870, Birmingham was a city with much to recommend it. It stood in the flood tide of Britain's industrial advance; yet the efforts of Joseph Chamberlain and others in municipal organisation and reform had saved it from the worst effects of industrialism that were then apparent in many English towns. It was a place of which its citizens might say with pride that it was no mean city; and an active young man of ordinary ambition, articled to a good solicitor's firm, with his economic needs cared for, and good prospects, might well have congratulated himself on his position. Not so Charles Darling. He had been accustomed to the leisurely life of the country and this was his first experience of living in a city. What was even more important, except for the brief period at Colchester Grammar School, years before, it was his first experience of routine. There had been something of the sort, of course, in his village lessons, but it had not dominated his life as routine dominates the life of a schoolboy. The average young Englishman is prepared for the office by the regulation to which his life has been subjected at school; indeed, in many cases so dependent does he become on routine that he would be utterly at a loss if this were withdrawn. To Darling this did not apply. The absence of regulation and routine had not only enabled him to dispense with it, but had made him impatient of its restraints when he found himself faced with them.

So it turned out that Darling's stay in the solicitor's office was short. Like Disraeli, half a century earlier, he "became pensive and restless." Whether he would have come to like it better had he given it a longer trial is a matter of conjecture. No doubt, if he had been obliged to go on with it he would have become reconciled to it. The point, however, is academic, for Darling was in the fortunate position of not being forced to continue with what was distasteful to him.

So he announced to his indulgent guardian that the position did not meet with his approval, and the two of them were once again faced with the problem of finding an occupation for him. Fortunately they did not have very far to look. Unlike Disraeli, Darling had not pronounced against Law unequivocally. " To succeed as an advocate," wrote Disraeli in *Vivian Grey*, " I must be a great lawyer, and to be a great lawyer, I must give up my chance of being a great man." But the young Darling, unlike the young Disraeli, was not obsessed with the idea of becoming a great man. He had merely decided that he had no taste for the routine of a solicitor's office. With Law itself, therefore, he need have no quarrel ; in fact, from the little he had seen of it he quite liked it. The Bar was likely to be a more agreeable occupation than the " Junior " side of the profession, and it had the reputation of being the least standardised and least monotonous of the avocations open to a young man. This, to Darling, was a great advantage. To offset it was the circumstance that it is, perhaps, the most precarious. But this was not so important a consideration to Darling, who had Mr. Menelaus to look to, as it would have been to a young man entirely dependent on his own efforts for a living.

So it was eventually decided that, instead of becoming a solicitor, he should transfer his attentions to the Bar and take his chance with that. Rather over twenty years after that decision was made Darling became a Judge. But at the time, the thought of the Bench never crossed his mind ; he was going to the Bar not because he hoped to become a Judge or in order to have a brilliant career, but simply because he did not like his first job and hoped he might like this better. How many great careers have sprung from so haphazard and so human an origin.

Going to the Bar meant living in London, and the first problem was to find a home. This fortunately presented no difficulties, for his mother was already living near Regent's Park, and there he went to join her, after a ten years' absence. The next thing was to join an Inn of Court, then as now an essential preliminary to being called to the Bar. Darling, who had no particular family connection with any of the Inns, decided on the Inner Temple, and having obtained admission set out on the traditional course of eating his way to the Bar. Nowadays the student, in addition to eating his dinners is obliged to pass various examinations before he is considered

eligible to practise as a barrister. In the 1870s there was no such degrading necessity. But even in those halcyon days mere gastronomic endurance was not sufficient qualification for a legal career. The custom was for a student to read in the chambers of some established barrister and at the end of his period of probation the barrister would, if circumstances warranted it, certify that the pupil had attained a standard justifying his call to the Bar. The effect of this system was to compress into one the two stages of student and pupil which to-day are generally distinct. Thus, whereas now the student will study to pass his examinations and, having become a fully-fledged barrister by so doing, will read for twelve months as a pupil in the chambers of some distinguished junior, Darling had only to read as a student-pupil until his master in the Law should certify his readiness for the Bar.

The next business was to find the master in the Law. Darling's cloistered life had not been such as to give the opportunity of contacts legal or otherwise. But he obtained an introduction to John Welch, an old barrister with chambers in King's Bench Walk, and there he went to read. Welch was one of a species of barrister now extinct, known in those days as "Pleaders." When Darling came into the Temple, in the early 70s, the Judicature Act of 1875 was not yet in force. The Judicature Act is the watershed of the English legal system, dividing off the old from the new. Before 1875 the processes of the Law were hedged about with all sorts of archaic survivals of procedure and practice, with the result that the initiation of litigation and its preliminary steps, technical enough as they are today, were then extremely complicated and specialised. To meet this difficulty there existed a special branch of the Bar called "pleaders," whose sole business it was to prepare these pleadings on which the action was based. Pleadings are still, of course, a necessary preliminary to civil litigation in the High Court; but since the Judicature Act they are much less formidable, comparatively intelligible to the lay mind, and can be drawn up by any junior counsel who afterwards appears in the case. In the old days this business was done exclusively by the "pleaders" who, having prepared the pleadings, had discharged their function in the case, the Court work being handed over to an ordinary counsel.

Welch, in whose chambers Darling read during 1872 and 1873, was one of these pleaders. He did not, that is to say, conduct

cases in Court. Darling's job was to assist him with the difficult task of drafting the pleadings, and at this educative and unexciting task he sat in King's Bench Walk while the great men of the day carried on their more spectacular contests in the Courts at Westminster. Darling, therefore, had personal experience of the old system and the new; at his death he must have left behind very few, if any, who were actively associated with those old time pleadings.

By January, 1874, Welch was prepared to certify his pupil, and on the strength of his certificate the Inner Temple called Darling to the Bar. At the age of twenty-four he was now a barrister with his period of pupil-training behind him. There was no point in remaining longer in Welch's Chambers, for a much more important problem now demanded his attention: what chambers was he to enter as a barrister "holding out to practise," as the phrase is? The importance of this will be apparent to all in any way connected with the practice of the Law.

There are two, or perhaps three, ways in which a young man may reasonably expect to succeed at the Bar. He may have some special interest or influence; that is, his family or friends may be solicitors able to put litigation in his way, small at first but becoming more considerable as he gathers experience. Nowadays it is almost better to have as father or uncle a director of one of the leading Insurance Companies, though this is a development that has occurred since 1874.

If the young man has no such special interest, it is essential to get into busy chambers where the senior members have more work then they can attend to; some of their discarded work the young man may hope to get—for their common clerk is naturally most anxious to keep the fees "in chambers"—and out of this he can build up a practice and connections of his own.

The third method is for the young man to cultivate his Circuit—or, strictly speaking, some portion of it. For the purpose of Assize cases the country is divided into eight Circuits, to one of which a barrister must be admitted before he can practise on any particular Assize. It does occasionally happen that a counsel is introduced from another Circuit, but he must be paid, in addition to his brief fee, a substantial "special" fee, which acts as a tariff to protect members of the Circuit. It is, therefore, broadly true to say

that members of a Circuit constitute a close corporation for their own part of the country; and it is obviously easier for a young barrister to become known in one or two Assize towns than it is for him to gain connections in competitive London. But the third method is dependent on the first or the second: in order to cultivate his circuit the young barrister must have the right local connections or else must be in good "Circuit Chambers," which already have Circuit clients.

These, then, are the three methods by which a young man may hope to initiate a successful career at the Bar. It is not suggested, of course, that success invariably attends the man who has been enabled by a wise selection of his relations or his chambers to surmount this preliminary hurdle; if he has no aptitude for advocacy he will probably not get very far in spite of it. But if he does not start right, no matter what his ability, he cannot hope to succeed. A young man who went, on his call to the Bar, to "slack" chambers with little work or connections, and thought that because he had done well in his Bar examinations or had been President of the Oxford Union or because his friends considered him so eloquent at the tennis club dinners—a young man, who thought that, because of these things, solicitors would be bound to come and brief him, would be doomed to disappointment and inactivity. Advertisement at the Bar is forbidden, and publicity is discouraged. Consequently a young man's fate is, to a large extent, in the hands of others.

The foregoing paragraphs may appear to be a digression: in fact they are intensely relevant. Almost the most interesting thing in the life of any great legal figure is: how did he start? This question can only be answered if the conditions prevailing are understood, and they are generally not very clearly realised by a lay public, saturated with the uninformed nonsense which is perpetually written about the Bar and those who practise at it. In the light of the foregoing sketch of the relevant circumstances, the question of Darling's beginnings at the Bar may be answered.

Darling had no real interest or connections to make smooth his legal passage. It was incumbent on him, therefore, to find a niche in a going concern, from which he could hope to develop a practice. The objections which deter many from a Circuit practice did not apply in his case. He was not a Londoner and had only

recently gone to live there. Consequently he had not many ties there ; and indeed to him, who was used to the country and loved it, the necessity of being out of London for a great part of the year was rather a recommendation than a drawback. The expense of travelling and accommodation was less serious in his case, as he was provided for by his cousin Menelaus. That being so, the obvious course for Darling was to find a place in good Circuit chambers. This he was fortunate enough to do at once, for there was at that time a vacancy in the chambers of J. V. Griffiths, in Crown Office Row, who had a flourishing practice on the Oxford Circuit. The vacancy was duly filled by the slight but animated figure of Darling, who crossed from King's Bench Walk to Crown Office Row and set out to follow the Oxford Circuit.

The Oxford Circuit winds gently and inconsequently through England's green and pleasant land. It moves West from London to Reading, but hurries on from this manufacturing town to reach the University city of Oxford from which it takes its name. Thenceforward it exists in the rarefied atmosphere of the College quadrangle and the Cathedral Close, leaving Oxford for Worcester, Gloucester, and Hereford. Then, still with becoming dignity, on to the county towns of Monmouth and Shrewsbury, until, reluctantly but not unprofitably, it re-enters the industrial zone at Stafford and reaches its commercial apotheosis at Birmingham. With such a complement of Courts—for besides the Assize Courts there are the Courts of Quarter Session—a man could not but see the legal machinery at work, whether or not he was himself operating it ; with such an itinerary a man could not but feel that his lot had been cast in pleasant places. Such was the background and such were the elements of Darling's life at the Bar.

His practice was mainly a Circuit practice : that is to say, he appeared more frequently in Assize cases and at Quarter Sessions than in London. On Circuit he was able to start right and stay right. He started by " devilling " for the great Huddleston, who was in the same chambers in Crown Office Row. Huddleston was at that time a man in his fifties, a Tory Member of Parliament and a famous Queen's Counsel who had appeared in a string of *causes célèbres*, including the Rugeley Poisoning Case. While not in the front rank of lawyers he was powerful in advocacy and penetrating in cross-examination. In 1875 he was made a Judge and was

the last Baron of the Exchequer Court to receive his patent before the Judicature Act abolished that designation for the future. On that account he used to call himself the " last of the Barons." But celebrated and successful as was Huddleston in the sphere of the Courts, he was no mere crabbed lawyer. He was a man of diverse attainment and varied interests, as was Darling himself. He was, like Darling, a brilliant conversationalist and a wit ; like Darling, he was a fluent French scholar and a connoisseur of French literature. And with all these other qualifications and activities, he combined an expert knowledge of the Turf and an informed appreciation of the theatre. In short, Huddleston had remained a man of the world when he became a successful lawyer ; a feat which, in his turn, Darling was to have no difficulty in repeating.

The relationship between a pupil and his master in the Law varies in the degree of its intimacy. But the relationship between a barrister and his " devil " cannot but be close, if the barrister is busy and the " devil " industrious. So, to be successful the alliance should be based on a foundation broader than a mere proficiency shared in the Law. In the case of Huddleston and Darling the alliance had the solid support of a broad humanity and a wide culture in both the younger and the older man. The work, too, was interesting, and the pleasantness of association with Huddleston and of life on Circuit removed any lingering repugnance to the Law. The Law had won a triumph greater than it knew, for it took prisoner one who was to be a most conspicuous ornament.

The prisoner did not, however, surrender his individuality. Charles Darling was not then, nor did he become, the typical industrious young barrister with his nose in Nisi Prius and his soul in the custody of the Law. He was not obsessed with his profession, and was even able to see that there was something humorous about the Law. Many lawyers are keenly aware of the funny things that happen in Court, but very few—and still fewer successful ones—can see anything actually funny about the Law. But Darling did ; for he was not only a raconteur but a humorist.

He had his first brief when devilling for Baron Huddleston. It was given him by a Mr. Davey, managing clerk to the firm of Johnston, at that time solicitors in Bedford Row. He looked absurdly young, as he conducted his case in the glory of wig and gown for the first time. Frank Lockwood, who was in Court, was

so struck with this that he drew a cartoon of Darling as a baby in the arms of Huddleston, who was dressed in nurse's costume. He entitled it "Huddleston's Darling," and circulated it round a delighted Court. Such was Darling's first entry to the practice of the Law.

He attacked his new profession with a relish the more intense that he could appreciate its occasional absurdity as well as its real dignity; he loved it none the less because, from the beginning, he steadfastly refused to wrap it in the cloak of pomposity which some of its advocates continue to throw over it. He was interested in Law, but was not "a profound lawyer." A profound lawyer is one whose interest in Law is greater than his interest in human nature. Darling was not a profound lawyer; his interest in Law, though genuine and spontaneous, was subordinate to his interest in human nature. Had it not been so, it is unlikely that this book would have been written. "A barrister," said Darling, "spends his time to better purpose when he observes the conduct of men who infringe laws than when he studies the motives of those who make them." The academic study of Law, that is to say, is no substitute for the proper study of mankind, which is Man.

The interest in human nature, sympathetic but unsentimental, was to be a real attribute when he reached the Bench. It was an attribute at the Bar, too, though there were other useful qualities here, as he recognised, and they did not necessarily depend on ability. Thus, he gave it as his opinion that "in getting a verdict it is as in getting anything else; you will obtain it the more easily if you know of no reason why you should not." The observation shows great insight and, at least as regards the smaller type of litigation, does not exaggerate the truth. The author remembers a young barrister of great ability who was not familiar with Darling's remark, telling him that he always felt handicapped in the County Court because he could not help appreciating the force of his opponent's argument. Up to a point, self-conviction assists in legal argument as it does in political rhetoric, but Darling was aware that the doctrine should not be pushed too far. "I think," he said, "that most counsel would be better advocates did they content themselves with simulating belief instead of actually embracing it." The truth of this dictum depends, no doubt, on the personality of counsel; it contains that engaging note of cynicism which warned

those who listened to the Lord Darling of later years not always to take what he said too seriously.

Thus, with a pleasant sense of enjoyment, at once tempered and stimulated by the mild cynicism of his outlook, Darling set out to establish himself at the Bar. His field, like that of most young barristers who travel their Circuits, was that of Quarter Sessions and the County Court, for the Assize Court, is, in practice, the privileged enclosure of counsel of rather longer standing. Quarter Sessions have mainly criminal jurisdiction and are presided over by a lay bench of Justices. Competition to serve is always quite keen, on account of the social prestige attaching to it; in this respect things have not changed greatly since the days when Macaulay wrote rotundly of the " Nabobs " dreaming of Quarter Sessions.

Darling himself wittily summarised the positions of counsel and Justices in the courts of Quarter Session by saying : " the barrister of one term's standing goes to the Quarter Sessions to make himself acquainted with the Law of the land by giving lessons in it to those who administer the Law by virtue of owning the land." As for the County Court, young Darling thought it still justified the observation of Blackstone that its dignity became much impaired when the Bishop was prohibited from attending it and the Earl neglected to do so. " No one," he said, in the light of his experience, " can now enter one of those courts without perceiving the episcopal and baronial influence to be not merely absent but to have altogether passed away." The remark remains sadly true ; and many a young legal fledgling must have unconsciously in his thoughts echoed this judgment on the decline of the County Court, as he sits interminably waiting with his guinea brief, and wondering at the contrast between his humdrum surroundings and the violent motion of his own heart.

To Darling, experience in small courts came rapidly, but it was for the most part in the country. In London his practice was not large, at this time or at any time. It was not possible that it should be, for his Circuit practice took him much from London, and London solicitors require their young men to be on the spot. He had to choose between a Circuit practice and the possibility of a London practice. Wisely, as we have seen, he chose Circuit chambers and Circuit contacts. He was rewarded by a very fair practice on the Oxford Circuit, but it meant the sacrifice of the greater reputation which a London practice could have brought.

It was the occasional nature of his appearances in London that made people say, sometimes, that " Darling had very little practice at the Bar." He was never in the first flight as counsel, it is true ; but neither, on the other hand, was he idle. And when he was in London he had fields of activity not always open to the ordinary barrister.

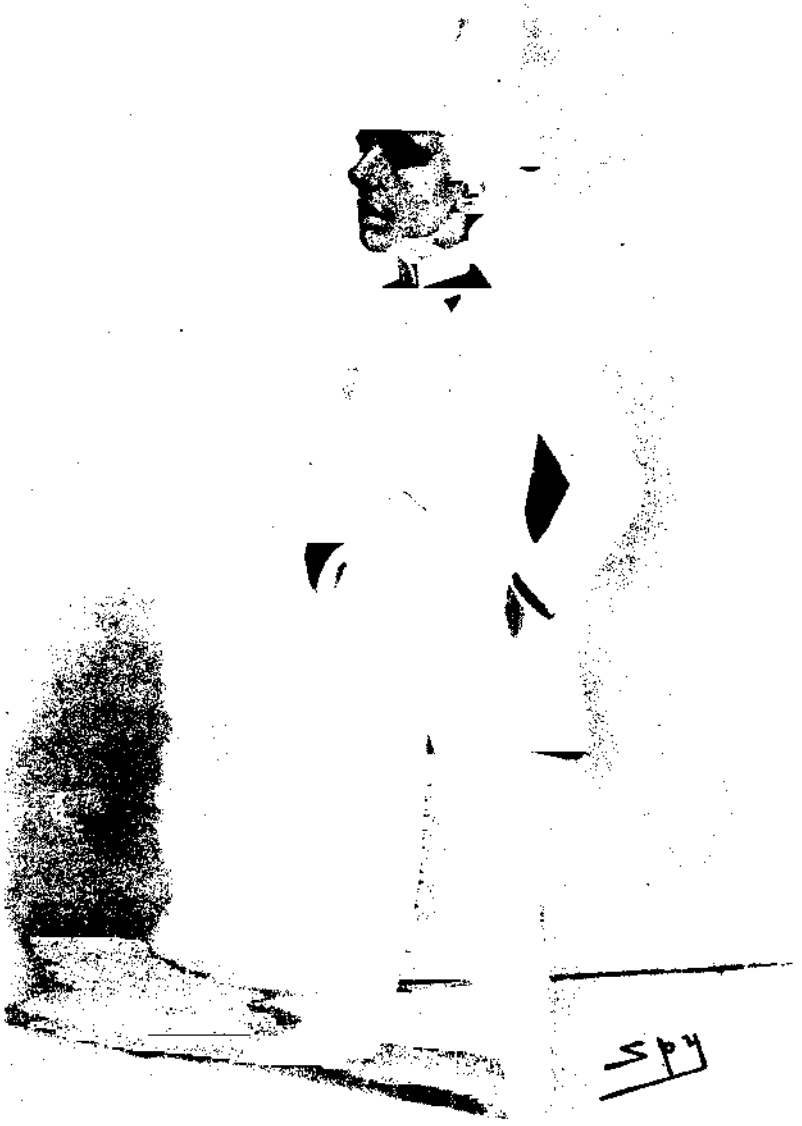
CHAPTER IV

JOURNALISM AND CIRCUIT LIFE

IN his early years at the Bar Darling lived, when in London, with his mother at Regent's Park. For a considerable period of the year, however, he was engaged in following the Oxford Circuit, and was consequently not in London. When he was in London he attended his chambers assiduously, but in those early days did not always find very much to do there. He was, therefore, in need of an alternative vent for his energies, and found it not unnaturally in writing, for which he had a natural gift and an inherent taste.

His early days at the Bar were, in fact, rather more literary and journalistic than legal. Not all his efforts appeared under his own name, either at this or any other time in his long literary life. In writing a review of one of his books, someone expressed the opinion that " in England ambitious lawyers recognise at an early stage in their career that a taste for Letters must be concealed or repudiated under the penalty of complete failure." Possibly Darling had this consideration in mind ; but it was not the only reason for the anonymity or disguise with which he sometimes cloaked the authorship of his writings, for he continued it even after judicial eminence had placed him above the pursuit of forensic success.

In the '70s he was busy both with the writing of books and with daily and weekly journalism. His incursion into journalism was, like that of so many writers, more or less accidental. One day he met Frederick Greenwood, editor of the *St. James's Gazette*, who suggested that he should contribute to the paper. Of this invitation Darling took full advantage and in his own words to me : " When I was in London and had nothing much better to do, I used to go down to the depot in Whitefriars (the Editorial Offices of the *Gazette*) and write something nearly every day." His



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"LITTLE DARLING"

contributions to the *St. James's Gazette* were in both prose and verse. Sometimes they were on political subjects, in which event they were generally couched in the satirical style at which Darling was most adept, and tricked out with the classical erudition he loved to display. Sometimes his efforts appeared over the signature " C. J. D.", but more often they were either without any ascription or bore a nom-de-plume. Thus, in November and December, 1880, we find him contributing two articles under the quaintly chosen soubriquet of " Louis d'Eglisalte." Nor did he spurn the correspondence columns of the *St. James's Gazette*, where he contributed, for instance, a long letter on Quarter Sessions, ending : " Since for my sins I still practise at Quarter Sessions, I will not sign my name but only say, Sir, that I am—A Barrister." Another letter, also of considerable length, which he contributed to the *St. James's Gazette* at about the same time on " The Terrors of Peace," was signed " Leguleius." No doubt his identity could fairly be inferred from either of these signatures. But who would have guessed that a letter addressed to the editor of the *St. James's Gazette*, starting : " Sir, In common with many of my countrywomen I have read with indignation the following statement of Mr. T. P. O'Connor at the Cannon Street meeting of Radicals : ' It is a fight of two and a half million people, men, women, and children, to get back the land from the eight thousand individuals who have desolated the population, and in many cases have debauched the female virtue of their tenants ' " and signed " An Irishwoman "—who could have guessed this came from the pen of Darling ?

I once asked Lord Darling what was his opinion of journalists. He gave a none too favourable answer, adding with the familiar twinkle : " But don't say so. There are far too many of them." Whatever his view of journalism may have been, he certainly practised it tolerably extensively in the '70s and '80s. Frequent though his contributions to the *St. James's Gazette* were, they by no means exhausted his journalistic energies. He contributed unsigned articles and sometimes leaders to the *Pall Mall Gazette* at the time when Harry Cust and a brilliant young staff had given that paper a very considerable standing. Another paper to which he contributed intermittently throughout his life was the *Saturday Review*, in which he figured as late as the 1920s. A bright weekly paper for which he wrote regularly in the late

'70s and early '80s was *Mayfair*, run by Lucy of *Punch*, whom he described as a "regular journalist." Like many other bright weeklies before and since, *Mayfair* only had a short career; but while it lasted, it provided a good forum for Darling. His contributions were chiefly in verse, and figured in a series which Lucy ran in 1878 called "Fancies of the Fair." Two of Darling's contributions to this series were concerned with the foremost political issue of that day, the Russo-Turkish War, and the subsequent Treaty of Berlin. One of them, entitled "Conditional Peace," included the verse:

Will the Sultan and Czar
When the Conference meets
Be more friendly by far
When the Conference meets
Than are Christians with those
Who have now been their foes,
Or again come to blows
When the Conference meets?

Not all his verse contributions to *Mayfair* were on political themes however. In May, 1878, he contributed to the series a poem entitled "The New School," bearing this time the signature "By an Old Boy." It was a satire on the Grosvenor Gallery school of painting, Whistler and the rest, of whom Darling, conservative in art as in all things, did not very readily approve. The poem was fortified by a sketch of the back-view of a young man looking at a picture; he is dressed in a frock-coat with a very high collar and a very tall hat, and his slim outline is sufficiently suggestive of Darling. But the poem itself is over-ambitious and not very successful.

Several of his poems, published in various magazines, were concerned with the Irish Question, over which political opinion of the day was so acutely divided. They were all strongly critical of Radical policy, and two or three satirized Gladstone with a force which in these less outspoken days would be considered savage, and which Darling himself would have tempered in later days. In October, 1881, he had a poem published entitled "A Remonstrance." It was addressed to Sir William Harcourt, the Home Secretary, who had written to the magistrates calling their

attention to the epidemic of prize-fighting and desiring them to curb it. The poem started :

> Why, Sir William, why so hard on us poor chaps
> As does a little milling now and then ?
> I have heard tell how in giving hardish raps
> You are the neatest and most punishing of men.

A few years later, when Darling went into Parliament, Sir William kindly provided illustrations of the truth of this, for he and Darling combined to give several bouts of Parliamentary pugilism which were very popular with the legislators.

He certainly had a happy touch with his lighter and more vigorous verses. There were some published in March, 1881, entitled " A Radical Rhyme," which started :

> Oh, what can we do for the Boers ?
> Now our troops they have slaughtered by scores
> We admit that their treason
> Has excellent reason ;
> So England their mercy implores.
>
> Independence we'll give them, of course,
> Since they threaten to take it by force,
> For there's nothing so wrong
> As oppressing the strong
> 'Twould expose us to years of remorse.

It ended :

> *Mea Culpa* old England shall say ;
> For an amnesty heartily pray ;
> Flagellated and shriven,
> Confessed and forgiven
> From the Cape she shall hasten away.
>
> Of Kruger we'll make a C.B. ;
> And Joubert a K.C.M.G.,
> And it's well understood
> That we'll hang General Wood
> If with them he shall fail to agree.

He also tried his hand at that stand-by of young writers and young barristers, book-reviewing. Some were literary reviews, but others were of legal text-books. Thus, in 1880 he did long unsigned reviews of a book on Libel and Slander, and another on the law of negligence. These were serious efforts, of a kind calculated to win the approval of the solemn members of the legal

fraternity. On some of his other productions they might perhaps have looked more askance. In this category could be included his first book, published in 1877, under the title *Scintillae Juris*, or, as it has been rendered, *Legal Sparks, By One of Them.* The book was small in compass, but it was very witty and poked a lot of fun at the legal profession. It was full of neat epigrams such as: "That a prisoner's wife may not be called even by himself is a beneficent provision designed by his enemies to save him from his friends"; or again: "If a man stay away from his wife for seven years the Law presumes the separation to have killed him; yet according to our daily experience it might well prolong his life."

Scintillae Juris also contained a number of parodies of judicial summings-up, a certain method for attracting the interest of members of the legal profession. Thus Brett, the Master of the Rolls, who had a bluff and hearty manner on the Bench, is depicted as summing up a breach of promise case to the Jury:

> "The learned counsel says you ought to find for the defendant. Well, you may if you like; but don't you go and do it because he asks you. He asked me not to leave the case to you at all; but I mean to.
>
> "Very well; now what are the facts? The defendant admits that he promised to marry the girl; of course, if he's a man at all, he can't deny that; and his counsel says he is a fool—very likely, but what then? Lots of people are fools, but they marry. Then that's no excuse for him. Next, the defendant says the plaintiff wouldn't have him, she says she would; which of 'em do you believe? He has three hundred a year—and—well, she's a woman; there, she don't dislike money you know. This is an action to get, what? Why, money to be sure; and defendant's money too, mark that. She can't bring an action for the man; and I can't order specific performance of the contract to marry, because the law says damages—that's money—are as good as a husband."

The book was certainly successful as such books go. The first two editions were published in 1877, but in place of the author's name contained only the last letters of three names: S-N-G. In 1879, when Davis & Son published the third edition, encouraged by the popularity of the book and also realising that an anonymity

which could be detected by anybody who had the diligence to go through the Law List was of little value, Darling allowed it to bear his full name. In 1889 Stevens & Haynes brought out a fourth edition, this time with the added attraction of illustrations by his friend Frank Lockwood, Q.C. Yet another edition was brought out, including his second work, *Meditations in the Tea-Room*, in 1903.

A contemporary review said: "We can scarcely describe *Scintillae Juris*. Anyone whose fancy will enable him to suppose 'L'esprit des Lois' of Montesquieu to have been written by Machiavelli, and then translated freely in the formal style of Lord Bacon, by an American humorist of exceptional refinement, might perhaps have an idea of the deceptive character of this collection of seemingly serious essays." If this is not considered adequate description, perhaps the safest course is to recommend the perusal of the original.

The book met with a very favourable reception from the Press. The *Illustrated London News* forecast an amusing appeal for it when they wrote of it as "A neat little jest book which may easily be hidden in the sleeve or in the fold of a bogus brief, so that the bored professional youngster, weary of nothing to do, can snatch a furtive bit of fun by a glance at its amusing pages without incurring the frowns of any superior big-wig or the tacit disapproval of any Solicitor's Clerk." Some papers were inclined to take the book more seriously and one such review brought Darling a letter from Baron Pollock:

Royal Courts of Justice.

Dear Darling,

When first I read Swift's advice to servants I remember I doubted how much was fun and how much was earnest. I now see your remarks on cross-examination are recommended to the serious study of Juniors!

I hope you have a pleasant Circuit and that I may come in the Summer.

Yours,

C. E. POLLOCK.

Darling's second book, *Meditations in the Tea-Room*, brought him a note from another very distinguished legal luminary, Lord Coleridge. The note, which was dated February 20, 1880, and

written on the notepaper of the Common Pleas Division, went as follows:

Dear Mr. Darling,

I hope you have seen that the *Spectator* thinks you a cynical M.P. who usually went into the lobby with Lord Palmerston.

Yours sincerely,

COLERIDGE.

The reference of the Lord Chief Justice, from whom Darling received several acts of kindness in his early legal days, was to a review of the *Meditations* in the *Spectator*. The book did not bear Darling's signature but was merely entitled, "By M.P." In trying to guess the identity of the M.P. the *Spectator* wrote: "We should think that 'M.P.'s' political creed is somewhat like that of Lord Palmerston—that he generally goes into the Liberal lobby, but has not much faith in legislation." The *Nation*, too, decided that "whoever 'M.P.' may be, he is evidently a person of mature experience, besides having the gift of humour and the art of expression." A more discerning reviewer wrote: "There certainly are reasons for suspecting him of not being a member of the House of Commons. He is clever, and treats with familiarity—great familiarity—the subject of statecraft, on the principles and practices of which he throws more light than the common light of nature."

Darling, at the time of writing the *Meditations*, was not a Member of Parliament. He was a young man of under thirty, who had not yet even approached any constituency with a view to adoption as candidate. But neither was his stature at the Bar very great at that time; and he had written the *Scintillae Juris* which, to use a convenient though anachronistic slang phrase of journalism, had "debunked the Law." The *Meditations*, published two years after *Scintillae Juris*, was really an effort to apply the same principles to politics. The book was not quite so successful from the point of view of circulation as its predecessor, but Darling himself rated it higher. It is predominantly cynical in tone and, like the *Scintillae*, contains many acid epigrams. Thus he said: "To sacrifice one's honour to one's party is so unselfish an act that our most generous statesmen have not hesitated to do it." And again: "What most recommends a Party Government is that it enables us to slander our rulers without sedition and overthrow them without treason."

The prevailing political feeling which emerges from the book is a suspicion of Parliamentary interference with life and a pointing of the truth—so necessary to the Liberals of the day—that people cannot be legislated into morality or happiness. The style of the book, like the style of so much of Darling's writing, reveals very strongly the influence of Sterne. Sterne's is a highly individual style; Darling's is not so much an imitation as the use of the same sort of vehicle of language for the cynical whimsicalities which were his main literary stock-in-trade. The disadvantage of such a style is that its desultoriness makes it the material for a leisured reading public; in an age like the present, to which the speeding-up of the apparatus of life has given an exaggerated desire to grapple with the point, it is unlikely to meet with favour.

Such were the activities that occupied Darling while he was in London. A large part of the year, however, was spent in following the Oxford Circuit. There would generally be four Assizes, corresponding to the four seasons. Each would last some time, as the Oxford Circuit numbers some eight Assize towns in its itinerary. It did not follow that he necessarily attended each Assize at every town, for there were naturally some places where his connections were better than others. Such towns were Worcester, Stafford and Shrewsbury. But on the whole he followed the Circuit regularly. In addition, there were various visits for the criminal business of Quarter Sessions.

Darling's work on Circuit is described in subsequent chapters, but it must be remembered that for a man who goes on Circuit regularly, Circuit life provides much of the background, social, cultural and general, of his existence. From the social point of view, the Oxford Circuit was extremely pleasant. The work could not be called heavy though it was tolerably varied and extensive, for, at any rate in those days, the area covered was not at all industrial in character. It is true that Birmingham was one of the Assize towns, but it was shared with the Midland Circuit; and the Midland had the lion's share. So there was very little, if any, commercial work of substance on the Circuit. Darling himself never had a commercial practice, nor did he take much commercial work on the Bench. The reason was not entirely lack of opportunity; his mind was in any case ill-adapted to it. But the lack of heavy work on the Circuit had its compensations in the quality of the personnel who were members of it. It

was familiarly known in those days as " the gentlemen's Circuit," and it certainly included many delightful and interesting personalities. Being comparatively small, its proceedings were informed with great friendship and sodality amongst the members.

J. V. Griffiths, head of the chambers in which Darling was in Crown Office Row, was, of course, a member of the Circuit, as was Huddleston, for whom Darling had devilled at the very beginning. As stated before, Darling and Huddleston had tastes in common, and the association was a very friendly one, despite the disparity in their ages. Huddleston was not particularly popular on the Circuit, as, despite his brilliance, he was somewhat aggressive in manner. He was of fairly humble origin and had made his way by his own great abilities. He was, however, something of a snob, and having married Lady Diana Beauclerk, daughter of the Duke of St. Albans, was very free with his references to " Lady Di." When he became Baron Huddleston he consulted another member of the Circuit as to what motto he should adopt. Bearing in mind Huddleston's weakness his friend promptly answered : " Why, never say die, of course ! "

But Huddleston's elevation to the Bench, which took place soon after Darling was called to the Bar, removed him from the sphere of Circuit life. More permanent in Darling's time was the leader of the Circuit, Henry Matthews, Q.C., a brilliant advocate, a man of wit and culture, and a great French scholar. Darling began and maintained a close friendship with him which lasted for many years. He subsequently became Lord Llandaff. Darling described him thus : " To him the conduct of a case was a form of sport—a game of skill—fencing for intellectual exercise pure and simple, the duel *à outrance*, the stiletto not disdained if the position of the client was a bad one. Naturally Henry Matthews, by far the most brilliant man on the Circuit, set the fashion." Among others who, to some extent, followed this fashion was Darling himself, the more readily because the idea of fencing for intellectual exercise was one which had a considerable appeal to him. Then there was Arthur Young, Q.C., an able advocate but hardly so brilliant and popular a figure as Matthews ; with him, too, Darling was on terms of some friendship. There was Jelf, later to be a Silk, with a bigger practice than Darling, who thought he had greater claims to a Judgeship when Darling actually received it. Considerably more intimate with

Darling, however, than these were John Rose, Recorder of the Circuit, who in due course married Darling's sister Janet; A. T. Lawrence; and Alfred Lyttelton.

Lawrence was older than Darling by some years, but he survived him by a few months, dying in August, 1936, at the age of over ninety, while pursuing his favourite sport of fishing. On the retirement of Lord Reading, in 1921, Lawrence became Lord Trevethin and Lord Chief Justice, an office which he held for only a short time. He and Darling had interests in common outside the range of legal duties; both were lovers of country life and particularly of the middle-western counties such as Hereford. It is not strange, therefore, that their friendship long survived the end of their Circuit association.

Of all those on the Circuit, except Darling himself, the best known to the general public was probably Alfred Lyttelton. This young man, a little later to be a member of that intellectual fellowship within London Society known as The Souls, gave earnest of the promise of as much distinction as any man of his generation. Equipped with the advantages of birth, position, wealth, intellect, charm and good looks, it would have seemed in those days that no eminence or distinction was beyond his reach. Yet he was one of those scarcely fashioned for achievement, and both at the Bar and subsequently in politics he disappointed the highest expectations of his friends. But he never disappointed them in friendship; his was a gracious and attractive personality which secured for him a sure place in the affections of those about him. As Darling said of him, with reference to this period: "His influence amongst his fellows was out of all proportion to his practice."

It was people such as these who made up the pleasant brotherhood of the Oxford Circuit of that day. They were men of culture, wit, and country tastes. And, following the Circuit as they did, through many of the pleasant places of the English countryside, they were not sentenced to that separation from the things of the country which a successful practice in the Temple so often involves.

Circuit life is, like club life, predominantly a masculine affair. But it was through his association with the Oxford Circuit that Darling met the woman with whom he fell in love. Some time in the early '80s Henry Matthews took him to visit Whitfield, a large country house in Herefordshire, which was the seat of Clive of

Wormbridge. Here it was that Mrs. Archer Clive, the famous authoress of *Paul Farrel*, had lived and written her books. She was a cripple and had been burnt to death in a fire at Whitfield. When the fire broke out she had pulled the bell to summon aid, but the rope had broken and she was left powerless amidst the flames.

When Darling first made the acquaintance of the family, through Henry Matthews, who lived near by at Belmont, there were ten young people living at Whitfield. Alice, daughter of Mr. and Mrs. Archer Clive, was the widow of General Greathed, and at the time of Darling's visit, had under her care five Clives, whose parents were both dead, and her own five children. There they had all been brought up together, each of the families being composed of three boys and two girls. They were all young, considerably younger than the rising young barrister and man of letters which by this time Darling had become. It was, however, very pleasant for him to go there, and soon he had a more urgent reason for doing so, for he fell in love with Mary Caroline Greathed, the elder of the Greathed girls. She was at that time very young, pretty, of a sweet and serious nature which manifested itself to all who came in contact with her; she had always lived in the country and liked the quiet life it afforded her. She fell in love with the brilliant and witty barrister who visited Whitfield so often, and they became engaged.

The wedding took place on September 19, 1885, at the Parish Church of St. Devereux, where the Dean of Hereford and the Vicar of Wormbridge officiated. There was a great turn-out of the Herefordshire families and many evidences of the popularity in the neighbourhood of the new Mrs. Darling, not the least gratifying being the strewing of the path up to the church with flowers by the Sunday School children for whom she had worked. Darling's brother was to have been best man, but as he was unable to be present his place was taken by John Rose. Each of the five bridesmaids, of whom Alfred Lyttelton's sister was one, wore for the occasion a diamond brooch given by Darling. After the wedding the young couple set off by easy stages for Belgium, where they were to spend their honeymoon; and so started nearly thirty years of happy married life.

CHAPTER V

THE OXFORD CIRCUIT

CIRCUIT life in the 1870s was a pleasant thing for the barristers. But the background to the life—of which agreeable dinners in Mess, pleasant horse-riding in unspoilt country, and visits to country houses were the delightful concomitants—was the murkier side of life in a backward, rural population. Those were the days before universal education and the achievements of science had raised the standard of life for the mass of the people. There was poverty; there was ignorance; there was in-breeding; there was feeblemindedness. There was also crime. And for the crime there was punishment. The late '70s, it must be remembered, are as near to the days when petty theft was a capital offence as they are to our own more lenient times. The crimes for which people were indicted at Assizes and Sessions were sometimes trivial and sometimes terrible; they were often pathetic. They did not always seem so to the judicial representatives of an age which believed that repressive and deterrent punishment was the only cure for a tendency to crime. Many of the sentences read harshly to modern ears. Petty thefts and gaming offences were visited with the punishment now reserved for serious frauds and vindictive assaults. At one Assize which Darling attended at this period, an unfortunate old woman was convicted of stealing some poultry. On hearing the verdict she broke down and pleaded for mercy. She was fortunate. The Judge said; "Perhaps I am wrong, but I intend to give you another chance. Twelve months' hard labour." On circuit in the '70s the quality of mercy was somewhat strained.

The calendar of cases at those Assizes on the Oxford Circuit did not include much of what, in the Temple, would be called "heavy litigation." But it contained an immense variety of cases that reflected every side of the lives and activities of the common man. Some had their lighter side, but those in which a man or

woman stood to forfeit life or liberty were wrought in a sterner metal. In these there was little room for humour, and Darling did not indulge his. When, in later years, his critics questioned his appointment to the Bench on the grounds that he was a mere jester, they forgot that Darling was not only the exquisite and eclectic young wit who had written *Scintillae Juris*; he was also a man who had daily been engaged in cases which gave him a real knowledge of human nature as displayed in the Law Courts. He would not claim that they made him a profound lawyer. Still less did he claim an expert knowledge of finance. "I never understood," he said to the author, when in his eighties, "why money went up and down." But there is more in the administration of Justice than specialised knowledge of the Law or the City. There is the ability to know whether witnesses are telling the truth; there is the broad humanity which can see the wood of the real issue through the trees of forensic argument. It was these qualities that Darling had to perfection; and that he had them is due in large measure to the invaluable cross section of life afforded him by the rough and tumble of the Oxford Circuit.

The Assize towns on the Oxford Circuit were various and scattered. Naturally, therefore, an advocate was liable to have more success in some centres than in others. In his time Darling appeared frequently at all these Assize towns; but Worcester, Stafford and Shrewsbury were perhaps his specialities when he started individual practice on his own account.

In 1877 he attended the March Assizes at Worcester to conduct an important prosecution for perjury against a man named Goldstein. At the same Assizes he defended a railway clerk named Link who, together with two other men, was charged with stealing £154 15s. 1d. belonging to the Great Western Railway. He was unsuccessful and Link was sentenced to five years' penal servitude, but Darling had the satisfaction of having it noted that he was "very ably defended and at great length." From Worcester he went straight on to Stafford, to defend six men accused of poaching on the estate of a local magnate. These truculent disturbers of social privilege had had the effrontery to resist capture by throwing stones. Their guilt was apparent and, considering the contemporary view of the sanctity of landed property and the harshness of contemporary sentences, Darling did creditably to keep the sentence down to

fifteen months' imprisonment, by means of " some very energetic and ingenious speeches."

The Summer Assizes found him more heavily engaged with three cases at Worcester and five at Stafford. At Stafford he found himself entrusted, as a young man of twenty-seven, with the sole conduct of the defence in what was known at the time as the Wolverhampton Murder. The prisoner was a little plasterer named Henry Rogers, who without apparent motive, cut his wife's throat with a razor in a field, and then dutifully gave himself up to the police. It was clear to Darling that there could be no defence on the facts, which were not in dispute. He decided, therefore, to run the line of insanity—less inevitable then than now—to which some colour was given by the rather peculiar demeanour of the prisoner. He could not, however, make much headway in his cross-examination of the policeman to whom Rogers had given himself up. This man insisted that the prisoner " appeared to be quite sober and calm at the time." When he mentioned that his wife's head was off, it was in a cold, indifferent manner. This was unpromising, but Darling succeeded in extracting the admission that he had " hardly treated it as a serious affair." When the surgeon of Stafford gaol gave evidence as to the prisoner's soundness of mind, Rogers interrupted excitedly ; " You never saw me when I came in gaol. You looked at me and you call that an examination. You are an old washerwoman."

The prisoner's father gave evidence that his son was subject to epileptic fits. His evidence was unfortunately interrupted in a distressing way from the dock. " Liar," called out Rogers excitedly, " you old cut-throat, may the curse of God be on you ! " Not all the prisoner's lack of restraint, nor Darling's speech in which he rose to the occasion with an eloquent plea on the score of insanity, could prevent the prisoner from being convicted. Today it is just possible the verdict might have been different. The poor old father, who had been so abused by his son, burst into a flood of tears on hearing the dread words. His son, it is pleasant to note, while awaiting execution wrote to his father asking his forgiveness " for the way I have abused you on two or three occasions in Court and cursed you without cause. I beg of you to pardon me and pray for me for the great wrong I did to you." So ended Darling's first murder case.

The year 1878 saw a marked increase in his practice, especially at the Stafford Assizes. He was soon engaged in another capital case, known as the Market Drayton Murder. This time, however, he was for the prosecution. It was not a matter of mystery, being a murder committed in hot blood and alcohol, arising out of the old and familiar triangle. A pretty country girl named Esther Beech had plighted her troth to George Holmes, a labourer. The signs seemed set fair for the pleasant and domestic routine of uneventful matrimony, until John Chidlow returned from Gibraltar. In the 47th Light Infantry Chidlow was only a private : but back in Staffordshire he was invested with the glamour of service in foreign parts. At any rate, he carried too many guns for the unfortunate George Holmes. The fickle Esther threw over George for John and an uneasy three weeks succeeded, with John cutting a dash and George brooding over his wrongs. On the night of December 22, both men were drunk, and Holmes offensive. Failing to find sufficient balm for his wounded feelings in words, he struck his former love on the nose. She, with restraint and inconsequence, merely said " drop that, Nokey, it's getting late." The fiery private of the 47th Light Infantry took a different view, and was seen a moment later to run from the house, pursued by Holmes's dying cry : " Oh Lord ! he's stabbed me." There was no doubt as to the fact that Holmes had been killed by Chidlow, but the provocation was held to reduce the offence to manslaughter. The career—both military and amatory—of the unfortunate Chidlow was curtailed by a sentence of penal servitude for life.

In all, Darling had twelve cases in the Winter Assize at Stafford. In addition, he had the amusing experience of giving evidence in a criminal prosecution. It came about in this way. Mrs. Conway was an old Staffordshire lady not too fortunate in her son, who was indicted for rape. She was poor and had, in fact, only £3 in her possession, but like a good mother she was desirous of spending her widow's mite to the best advantage in the cause of her son. It seemed to her that the best thing was to get Mr. Darling to defend him, as she had heard that he was a very clever barrister. Consequently, she got a gentleman named Simpson to take her, as she thought, to Mr. Greatrex the solicitor. Actually " Greatrex " was Ansell, a confederate of Simpson's. Ansell told Mrs. Conway that he would not trust his briefs to Darling, but would get somebody

better. Mrs. Conway, though reluctant to think that the nice-looking Mr. Darling was not to be trusted, was impressed nevertheless at having a still better barrister. She handed over her £3 with a light heart, feeling that her son was as good as free. But alas, when he came up for trial at the Assizes, no one had been instructed to defend him. Darling was asked by the Court to undertake the defence, which was, in fact, hopeless, Conway being convicted and sentenced to seven years' penal servitude. It remained to deal with Ansell and Simpson, who were charged with conspiracy to defraud. Darling was called to give evidence of his unsuccessful defence of Conway. " Would you have defended him for a guinea ? " asked Underhill, counsel for the prosecution. " Oh, certainly," replied Darling. The Counsel for the defence put to him, " You have been retained from the dock ? "

" I have had a dock brief once," was the reply.

" What opinion did you form as to the guilt of the prisoner Conway ? "

" I formed the opinion that he would be convicted."

" As a matter of practice, do you know that prisoners imagine that if they plead guilty they will get a lighter sentence than if they defend ? "

" Well, I cannot tell you, never having been a prisoner," replied Darling, amid laughter.

Here Mr. Justice Denman intervened, " Would you have any hesitation," he asked, turning to Darling, " in taking a guinea brief in consequence of its length or the seriousness of the subject ? "

" No," said Darling.

" You would have said," continued Denman, " that my business is to take that fee, not to quarrel with it ? "

" Yes, my Lord."

After this demure acceptance of such unexceptionable principles Darling was allowed to leave the box. The prisoners were convicted and sentenced to twelve months' imprisonment. They appeared stunned at the severity of their sentence and the spectators who had crowded the court were also evidently unprepared for so sharp a punishment where so small a sum was involved. But a meaner and more contemptible fraud it is difficult to imagine.

With the Summer Assizes Darling returned to his proper business of appearing in Court as Counsel. At Worcester he had a

neat win on July 10, on a legal point. William Bateman, a beer-house keeper, was accused of selling drink on a Sunday. When charged before the magistrates with this heinous offence he denied that there was anyone on his premises. For this he was now indicted for perjury, as two police officers came forward to give evidence that they had seen more than fifty people enter the premises carrying jugs of beer. Darling's defence was that the prosecution had not, in the proceedings before the magistrate, produced formal evidence that the Queen Caroline, Bateman's house, was a licensed premises. It was, therefore, not within the jurisdiction of the magistrate to administer the oath in question. As there was no proper oath, it followed there could be no perjury whether the words spoken were true or not. The Judge ruled in favour of Darling's contention and directed that Batemen should be acquitted.

Of the sixteen cases in which Darling appeared at this Assize, the most arresting was the one known as the Marl Hole Tragedy. The story was typical of the not infrequent squalidity of the Potteries in those days. A poor charwoman named Ellen Rush found refuge from the dreary routine of her days in the consolation of strong waters in the evening. One night she consoled herself so freely that she had to be turned out of various public-houses, though their standards of sobriety were not too exacting. In the last one from which she was ejected two Irish miners, Cullen and Regan, noticed her and followed her out. Poor woman, she cannot have looked very attractive, but Cullen and Regan were not over-burdened with delicate sensibilities. They hustled her with them along a footpath which lead to some brickworks and a clay pit. Screams were heard at about 10 o'clock ; but screams were not infrequent in those parts, and their significance easily misinterpreted. Next day the woman's body was discovered deep in the obscene and slimy clay at the bottom of the pit.

Darling appeared for the prosecution when the two Irishmen were charged at Stafford with her murder, and there seems little doubt that his theory was correct that the prisoners had taken advantage of the unfortunate woman's intoxication to violate her. Having done this, they lost interest in her and, indeed, felt embarrassed by her presence. Consequently, they either deliberately pushed her into the pit, or left her, in her dazed and weakened condition, so near it as to make it probable that she would fall in of

her own accord. The prisoners had been seen in the woman's company and were also connected with the crime by the clay on their clothes and the traces they had left on the floor of the brick-kiln where they had violated her. They were convicted of manslaughter, as it was held that there was not sufficient *mens rea*, i.e. criminal intent, to justify a finding of murder. Each received fourteen years' penal servitude.

A little later, Darling was again engaged in a murder trial at Stafford. But whereas the Marl Hole Tragedy was sordid, the Shrewsbury Murder, as it was called, was marked, with a pathos all too frequent in the Circuit criminal records of those days. Thomas Humphries was a spinner whose mind, never strong, had become deranged. He had always been on good terms with his wife, but one night he murdered her by stabbing her eleven times. They found him with her, lying in a pool of blood; he had seventeen self-inflicted wounds. Not unnaturally, he appeared to be in a very weak condition when he came up for trial. He admitted killing his wife, but on the nature of the charge being explained, said that he had not meant to do it. Darling, who was in Court, was asked by the Judge to undertake the defence. There was, of course, no defence on the facts, so Darling contented himself with calling medical evidence to show that the prisoner was suffering from epileptic mania at the time of the murder. His contention was successful and Humphries was ordered to be detained during Her Majesty's pleasure.

The year 1879 started, as the year 1878, with murder. At Worcester, on January 21, Darling began the new legal year by defending a young groom of twenty-one, named Enoch Whiston, who was charged with the murder of Alfred Meredith. Meredith had been to the bank to fetch £280 for his employers' wage bill. Whiston was a young man lacking in subtlety; he believed in the good old rule, the simple plan. He simply followed Meredith, shot him, and took away the bag of money. Unfortunately for himself, he was observed following Meredith and subsequently running from the spot. The case was almost one where *res ipsa loquitur*. So stupid was his conduct that Darling again ran the defence of insanity. He relied on the man's stupid behaviour in attempting no concealment of his act, on a previous threat to commit suicide, and on the evidence of his fiancée who was called to say that Whiston

had always been "simple" and had suffered from headaches. Against this the prosecution countered with a perfectly rational motive for the murder in that he had wanted to give money to this same fiancée. Darling did his best, but it was not enough to convince the Jury that a man who does a criminal act incompetently and stupidly is, therefore, incapable of knowing the nature of his act or the distinction between right and wrong—the legal definition of insanity. So Whiston was found guilty and sentenced to death.

At Stafford Darling had a wide range of cases, including rape, concealment of birth, murder, and slander. After the last of these cases he had to move straight on to Shrewsbury, where he was briefed as Junior to Underhill, Q.C., to defend a charge of manslaughter arising out of a killing at Market Drayton. In this they succeeded in getting their man acquitted. The success was repeated in the Spring Assize at Worcester, where he was successful in a manslaughter defence, this time conducting the case alone, without a leader. At Stafford there were many cases awaiting him, including forgery, assault, and a manslaughter. There was also the case known as the Shenstone Poaching Affray. In this, three labourers—two of them brothers—had been poaching and were disturbed by the gamekeeper whilst on their nefarious occasions. They shot at him, but were caught and charged with an attempt to do grievous bodily harm. Darling defended the two brothers but without success, and they were rewarded for their nocturnal escapade with a little matter of fourteen years' penal servitude apiece—an illustration of the view the Law took of poachers, in those days of property and privilege.

On his next visit to Stafford Darling had a very painful case. A young Walsall worker, named Lines, was observed one day pursuing his wife from the house, armed with a cleaver in one hand and a poker in the other. The wife was fortunate enough to escape, but their child was found dead in bed with wounds on its face. Lines was—or had been—an affectionate husband and father; but village gossip insisted that the child was not his, and whenever the unfortunate man went out into the streets he was met with the continual jeering of the juvenile population, bringing these unpleasant facts to his notice in no uncertain manner. By this treatment Lines was, as Darling said, "tortured almost to madness."

Darling ran the defence on the grounds that the prisoner had aimed a blow at his wife, not with intent to do her grievous bodily harm, but in the exasperation to which jealousy, suspicion and mockery had brought him. That blow had missed the wife and struck the child with fatal result. This, Darling argued, could not be murder. Unfortunately, his action in pursuing his wife with such unequivocally hostile intention into the street hardly squared with an absence of desire to do her bodily harm. Nevertheless, such was Darling's eloquence in presenting his client's pitiable position as a man more sinned against than sinning, that though he could not stave off the inevitable verdict of guilty, he succeeded in inducing the Jury to temper it with a very strong recommendation to mercy.

It was also at Stafford, in the same year, that Darling prosecuted, as junior to Underhill, in the case of the attempted assassination of the Vicar of Gornall. The Vicar had been shot by his former choir-master who bore him a grudge because the Vicar had sentenced him in his capacity as Magistrate. Unfortunately for the choir-master, who had pushed this ecclesiastical quarrel to such un-Christian lengths, the old doctrine of benefit of clergy no longer survived, and he was rewarded with twelve months' penal servitude.

Most of these, it will be observed, were criminal cases and many of them ones in which the taking of life was involved. Some of them were forlorn hopes, for it had begun to be realised that young Darling, besides being possessed of a nimble wit and adroit judgment, had considerable powers of eloquence and a persuasive manner in presenting a point, which would often succeed in getting more charitable treatment for defendants whose case had no legal merits. But it must not be supposed that this criminal work, for which he was so well adapted and of which he did a very fair amount, prevented his appearance in the Civil Courts. He did his share of County Court work, though this was subordinate to his work at Assizes. About this time, however, he began to catch the eye of more Circuit solicitors in the matter of civil practice. Thus we find him at Shrewsbury, at the end of July, appearing in an interpleader, where he had a bank for his client and for the first time led another junior in the case.

That summer and autumn were busy, for the Summer Assize lasted through the holiday month of August, when he was engaged in several cases at Gloucester. In the Autumn Assize he had over

ten cases of varying importance at Stafford, half a dozen at Worcester, and a few each at Gloucester and Shrewsbury.

The beginning of the '80s found Darling in a not unenviable position. He had not, it is true, had a meteoric career at the Bar. But he was getting his fair share of work; what he did have was interesting and, most important of all, his practice was steadily increasing. He was not, as we have seen, solely a lawyer. By now he was well known in legal circles, and a little beyond them, as the witty author of *Scintillae Juris* and *Meditations in the Tea-Room*. While in London he had been in the '70s a daily visitor to the offices of the *St. James's Gazette* and a regular contributor to other papers. It is not always easy for a barrister to be versatile and retain his practice. Literary activities tend to be suspect by solicitors and lay clients, who feel—quite unjustifiably as a rule—that because a man is capable of doing more than one thing, he would, therefore, want to do more than one thing at a time. Darling was fortunate in two respects. He was not dependent for his livelihood on his earnings either at the Bar or in literature. Consequently, he could at any moment have abandoned either the one or the other, or even both. But as he was in this fortunate position the necessity to do so never arose. He continued at the Bar, and he continued to write.

His first important case in the new decade, after one or two trivial matters concerned with the robbery of unfinished hats and the value of a horse and cart, was a libel action at Stafford Assizes, in which he was Junior Counsel for the plaintiff, being led by his friend J. B. Matthews. The action was brought against the Wolverhampton *Lantern*, a provincial satirical paper which shared the fate of so many of its kind and lasted less than a year. Its short life, however, was quite a merry one. When a Mr. Southall, Darling's client in this action, spoke at a meeting of ratepayers to protest against an increase in the rates, the *Lantern* reporter called him "a diminutive Boanerges," and "a wild, unkempt, diminutive figure." When he got up to speak there was, according to the *Lantern*, "a yell of encouragement from the great unwashed to the little unwashed." Green, the proprietor of this lively paper, conducted his own defence with spirit. He pleaded that the passages were not libellous and were fair comment; and in Court he produced arguments in favour of his plea by alleging that Southall was a firebrand who lectured on teetotalism and phrenology. Despite the

sad fanaticism of their client's views, Darling and Matthews had little difficulty in proving the libellous character of the report, and duly secured an award of £40 in damages.

Later, Darling defended a Welshwoman, named Sarah Edwards, on the charge of obtaining money by false pretences from a moneylender named Solomon Blaiberg. Blaiberg had advanced £40 on the security of the defendant's farm stock, which was now claimed to belong to her brother as joint-owner of the farm. Neither Sarah nor her brother could read or write, and the brother had the additional social disadvantage of speaking only Welsh. For her loan the defendant had to pay interest at 40 per cent. She had already repaid £4 and Blaiberg had got a mare and two calves, which he had sold for £6. When Darling put this to Blaiberg in the box, the moneylender querulously replied: "It was an old mare." Darling answered him with immediate suavity: "But they were young calves, I suppose." He then cross-examined Blaiberg at length and very severely, and secured an acquittal for his client.

The next year was one of activity, mainly in the Criminal Courts. In January he had some ten criminal cases at Worcester and Stafford; this was followed by an important case at Shrewsbury, in February, where he unsuccessfully defended a man on the charge of train-wrecking. At Stafford, in the summer, he had another of those sad murder cases where the facts were fairly clear but where there were extenuating circumstances, as in the Shrewsbury murder and the Walsall Child Murder. This case was known as the Stafford Wife Murder, and Darling defended Alfred Moore, a labourer, who was charged with the murder of his wife Jane. Jane had, unfortunately, not appreciated her domestic happiness, and had been foolish enough to enter into a liaison with a certain Flanagan, a rag-and-bone collector. Moore found Flanagan actually in the act of committing adultery with his wife, and this so infuriated him that he killed her. Darling admitted the killing, but pleaded that the adultery was sufficient provocation to reduce the offence to manslaughter; also that the wife was drunk at the time of the husband's assault, which would not have been sufficient to cause her death had she been sober. His eloquence weighed with the Jury more than his argument, for they found Moore guilty of murder but with a strong recommendation to mercy.

Something of the range covered by Darling in his forensic appearances at this time can be seen by a review of some of the cases in which he was briefed within a short period. They include, in the year 1882, manslaughter, trespass, attempted rape, an action for money lent (in which he was led by Matthews), extortion, indecent assault by a boy of fourteen, assault, stealing, rape on a child, post-office robbery, forgery, child-murder, an action for money had and received, murder by a lunatic, the inevitable poaching cases, assaulting a policeman, and rape. These cases—taken at random from his activities at this time—show that, if in the Temple his reputation was that of a jester and a journalist, on the Circuit he was an active and versatile counsel whose services were in considerable demand.

He had at this time several libel actions in which provincial worthies felt themselves to be defamed. The Magpie Libel, however, unlike the Wolverhampton Libel, was not a civil action but a prosecution. The person defamed was Charles Henry Dudley, who in the Year of Grace 1883, was Mayor of Stafford. Ernest Long had shown himself so unsusceptible to the dignity of that great office as to refer to the Mayor as " a ginger-bread king, a mushroom aristocrat and an electro-plated sham who dons the civic robes his modest predecessors did not crave for, and airs them on the slightest provocation," and he was placed in the dock to answer a charge of criminal libel. Darling was again led by Matthews for the prosecution. Long said he had not attacked the Mayor from any personal feeling but was driven to it through poverty. He had attacked him in the same spirit as he would have attacked the Premier. On this novel line of defence Darling's comment was simply : " Poor Premier ! " The defence suggested that the matter should not be taken too seriously ; but the prosecution found it a serious matter and noticed with grave and demure dismay that " it really appeared that there was a class of residents in towns to whom nothing was more acceptable than gossip of a nature libellous and personal, and this was strongly evidenced in the large number of so-called Society papers at the present time, which delight to bring into notice every painful detail of private life." After this awful revelation the Jury found the unfortunate detractor guilty.

Not many of Darling's cases at this period, however, were relieved by the touch of comedy. And hot on this municipal

squabble came the case known as the Kynnersley Child Mutilation, as unpleasant a case as any he had in his assorted practice at the Bar. It was a murder unrelieved by the note of tragic passion and unexcused by the accident of circumstances. Darling defended a woman named Elizabeth Mayor, charged with murdering her stepdaughter, a child of ten, whom she had persistently ill-treated. The prosecution alleged that she had caused the child's death by striking her on the temple. Then, with the aid of her husband, who was defended at the trial by Darling's friend Lyttelton, she cut up the body and burnt some parts of it. The rest, including the head, she threw into a neighbouring pool.

The case caused a great sensation in Stafford by reason of the horror of the circumstances, and huge crowds pressed into Court to see the two monsters in human flesh who, to the disappointment of the spectators, looked like an ordinary decent artisan and his homely wife. The prisoner's son, a likely lad of fourteen, gave evidence for the prosecution. For an hour he retained perfect composure, both in examination-in-chief and under Darling's cross-examination, but finally the ferocious scowling and head-shaking with which the mother reinforced Counsel's questions did what Darling's own questions failed to do and reduced him to a fit of uncontrolled weeping. For a time this spectacle affected the father too. But before the boy's evidence was finished his natural stolidity had reasserted itself, and he was nonchalantly consuming the luncheon he had brought into the Court with him.

The defence run by Darling was that the girl had been subject to fits due to the neglect and ill-treatment she had received. In one of these fits she had struck her head a blow that killed her. The parents, frightened at the thought of the exposure of their own cruelty, had foolishly tried to conceal the body. This explanation, however, did not convince the Jury, who brought in a verdict of manslaughter against the woman and found that her husband had been accessory. She received twenty years' penal servitude, against her husband's eighteen months' hard labour; and it was now her turn to give way to her feelings, which she did until she was taken below in a veritable hysteria of sobbing and moaning.

In 1884 Darling added to his range of cases another specimen which, in later days, as a Q.C., was to become a speciality of his. He appeared in a breach of promise action. His client was a young

man called Bowers, who had the reputation of being rather a Lothario with the provincial ladies of Stafford. According to Matthews, who this time was against Darling, Bowers had shown great partiality for his client, a Miss Blakeman, while she was still at school. Knowing Bowers's reputation and their daughter's youthful innocence, her parents had not encouraged the engagement when he first proposed. But whether it was that their reason was overswayed by his assurance that he would give them no cause for complaint, or whether their hearts were melted by his having to go to hospital for an operation on his leg, they relented and accepted him as a son-in-law. Their kindness of heart was rewarded more quickly than is generally the case, for three months later the young man's uncle died, leaving him no less than £60,000. By an unfortunate paradox however, this fortune, instead of embellishing further the pleasant prospect of matrimony, had the effect of cooling the fortunate young man's ardour. And he began, it is sad to have to relate, to make excuses for not going to see his *prétendue*. She, poor girl, was so distressed by this as on one occasion to despatch a peremptory ambassador to him in the person of her father. Bowers, however, was engaged at the time in the manly and absorbing pursuit of rat-shooting and refused to abandon it to see her. Miss Blakeman was affected by this unflattering preference. She brought an action for breach of promise.

Against the touching misfortunes of the plaintiff Darling laboured with masculine and prosaic argument. He argued that, owing to his operation, Bowers was not in a fit state of health to marry. Matthews was on his feet in a moment, objecting that this defence was bad in law. Darling adroitly pointed out that he was not claiming that unfitness was an absolute defence in Law to an action for breach of promise, but that there was authority for saying that it was sufficient grounds for postponement of the marriage. He decided not to put the defendant into the witness-box and in this his judgment was sound ; for there was little the young man could have said to further his case and a good deal that might have been extracted from him in cross-examination that would certainly not have furthered it. He called, however, medical evidence to show that the young man's health was bad and would not be improved by matrimony. The tonic he needed was a twelve-months' sea voyage. But it was uphill fighting against the plaintiff, who had an

attractive presence and a broken voice, which burst into tears at just the right moment before leaving the box. Even so, Darling's arguments made an impression on the twelve good men and true who spent a long time in retirement debating the merits of his case against the appeal of the plaintiff. Chivalry won a belated but decisive victory, and they returned to award her £2,000.

In this summer Darling made one of his comparatively rare appearances at the name town of the Circuit, in a case which seems almost like a caricature. It all arose out of an incident in a second-class railway carriage between London and Abingdon ; this did not, however, prevent an enthusiastic reporter of the time referring to it as " an assault in high life." Mrs. Henry de Windt was sitting in the carriage surrounded by her sister, who was travelling with her, another lady and a little girl, who were not, and an assortment of parcels, which were. Into this crowded scene came no less a person than Captain John Preston, of the Berkshire Militia, and his wife. The exact truth as to what happened next is veiled from inquisitive posterity, for except that they were in disagreement the parties agreed upon little. According to Captain Preston, Mrs. de Windt tried to maintain that the seats were all engaged. On Mrs. Preston's demurring, Mrs. de Windt said loudly to her sister : " This is what comes of travelling with one's inferiors ; we had better have gone first class." At this Mrs. Preston, not altogether unjustifiably, complained to her husband that the ladies had been extremely rude to her. The journey bore out the promise of its inception and none enjoyed it less than Captain Preston, whose military dignity was compromised by his having to sit with a three-cornered parcel in the small of his back. In an endeavour to change his seat he tried to move a box of Mrs. de Windt's ; she resisted, and there followed something which in a less elevated stratum of society would have seemed very like a vulgar row.

It must not be thought that Mrs. de Windt accepted for a moment this version of the story. Preston, she said, had not behaved like a gentleman. So far from this, he had actually broken her parasol when he put it in the rack, and cut her finger with the string of a box, and had even—crowning insult—threatened to give her in charge of the guard. However it might be, Mrs. de Windt had insisted on being put into another carriage at Reading. Considerable commotion was caused by people on the platform peering

rudely into the carriage to see what they thought was an unduly amorous soldier who had been guilty of an outrage against a lady in a train. Indeed, Mrs. de Windt *did* feel herself outraged, though not quite in the sense believed by the people on the platform.

The sequel came three days later when Captain Preston received a call from another officer, hitherto unknown to him—Captain Russell, a gentleman of military aspect—who handed him a sealed note, at the same time saying that he knew what was in it. It was from Mr. de Windt, couched in strong terms and demanding an apology. Mr. de Windt was then called in from the hall, and in answer to Captain Preston, who said he would give him an explanation in a little time, exclaimed, " That is all damn'd rot! Are you going to apologise ? "

" Certainly not ! " replied the intrepid militiaman ; " there is nothing to apologise for."

There then followed a struggle, in the course of which tempers were broken though, happily, no bones. Captain Russell went so far as to ask Captain Preston to come outside, where he would give him " a —— good thrashing." Captain Preston not availing himself of this offer, the two gentlemen left him to his own devices, which turned out, duelling being no longer in vogue, to be resort to the machinery of the Law.

Preston issued a writ against Mr. and Mrs. de Windt for slander and also against Mr. de Windt for assault and libel. The de Windts took Darling's opinion on the position. After listening carefully to the rather ludicrous tale, he advised that on the issues of libel and slander they were on safe ground because there had been no publication of the letter containing the alleged libel, and there did not appear to be any special damage which is necessary to found an action for slander. On the question of assault, he gave it as his view that there was probably a technical assault, but that on the particular facts large damages were improbable. He thought that the Jury, as men of the world, would treat the affair as a triviality that would come under the legal maxim *de minimis non curat lex.* He advised, therefore, payment of 40s. into Court.

But when the case came to Court, whether it was the gallant bearing of Captain Preston, who said that he had not the slightest fear of Mr. de Windt (who was a smaller man than himself), or whether it was that Matthews was in better form than Jelf, who had

been briefed to lead Darling, the defence did not carry the Jury. Darling was right on the issues of slander and libel, which the Judge withdrew from the Jury. On the question of the assault, however, the Jury found for the plaintiff and awarded £50. So here Darling's judgment was wrong. Or else, if you prefer it, the Jury's judgment was wrong. It all depends what you feel about rows in trains.

Early in the New Year Darling had another case brought to him, which also seemed more important to the protagonists at the time than it does in the light of history. The prosecutors were the Birmingham Conservative Association, who prosecuted a man named Kirton for forging tickets of admission to a Conservative fête in Birmingham. By this time Darling was a Conservative candidate for Parliament, so the Association loyally briefed him to appear for them. In opening the case he remarked that " owing to adverse circumstances the Conservative Party did not succeed in making a very successful demonstration." This reference to the Chamberlain-Liberal caucus, then all-powerful in Birmingham, was greeted with loud laughter in Court. As to what Kirton had done, Darling said that the promoters would have given tickets to anyone they thought would behave themselves, " but in Birmingham and other large towns there exists what Mr. Bright has called the residuum, and at a political meeting, if one wishes to be heard, it is just as well that the residuum be outside. As to this demonstration, if the residuum wanted to get in to the meeting and could have got anyone to give them 6d. apiece there was nothing to prevent them from going. But it did not suit the defendant to get the residuum in by such expensive means." The " residuum " was a thing with which Darling's own electoral experiences were making him increasingly familiar, and the suggestion that there were times when they were better outside came from the heart. In this case he succeeded in carrying the Jury with him and Kirton's ingenuity earned him three days' imprisonment and £25 fine.

The next day Darling prosecuted a man on a charge of murdering his wife. But it was held that there was not sufficient evidence to show the cause of her death and the prisoner was found not guilty.

And so, through the Spring Assizes and into the summer, he pursued the Circuit round. But this year he was less heavily engaged, for other matters were claiming his attention, and new vistas were opening up before him.

CHAPTER VI

ENTRY INTO POLITICS

IN 1882 Mr. Menelaus died and left the bulk of his not-inconsiderable fortune to his cousin. It has already been pointed out that Darling was not dependent for his livelihood upon his earnings at the Bar. But hitherto his independence had been in the precarious nature of an allowance; henceforward, he was the master of his own financial destiny.

Whatever moralists may aver to the contrary, there is everything to be said, as Samuel Butler vigorously pointed out, for the possession of a sufficient unearned income. Above all, it gives the fortunate possessor, relieved of the daily anxiety of bread-and-butter economics, a chance to trespass beyond these narrow confines and adventure more boldly into the delectable spheres of unremunerative activity. Darling was no exception. His own literary taste and the comparative leisure of his early days at the Bar had already dictated an effective entry into print. Now he could afford to extend his vision still wider. The field of politics, for instance, difficult of entry for the struggling young Junior, would not remain closed to a young man in comfortable circumstances to whom, according to the ideas of the time, it was a matter for congratulation that he should choose to follow a profession without the spur of economic necessity. The risks of taking Silk were insured against, the responsibilities of matrimony were eased by the inheritance of that fortune. Within six years of acquiring it Darling was a married man, a Queen's Counsel and a Member of Parliament.

It was natural that he should be interested in politics. He was not a profound political philosopher; but then very few politicians are. He was not interested in economics, of which he never attempted to conceal his ignorance; but this was a much less important part of the equipment of the political aspirant in the 1880s than in the 1930s. He was not infused with the passionate

and grandiloquent idealism that hurls men inevitably into the political arena. The phrase in which he described to the author his determination to participate in politics was : " I took a fancy to politics." That phrase was typical of the man ; of his undemonstrative nature and of his mistrust of displays of enthusiasm or exaggeration. But underneath it, too, can be seen the eclecticism which was just as important a characteristic. There were some things in life that were worth doing ; some things worth believing in, and some things worth fighting for. To these things inevitably one " took a fancy." Darling was by instinct and temperament a Conservative. He was a genuine lover of the countryside and of the country's institutions and, beneath a polished and glittering façade he had the fundamental qualities of sound judgment and common sense. He had, too, the lawyer's instinctive respect for the accumulated experience of the ages which has resulted in the existing order of things. He had, too, some of the limitations of the instinctive Conservative. His mind, which operated with rapidity and finesse in its chosen spheres, was somewhat inelastic and rigid to outside impressions ; his prejudices, robustly conceived, were cherished with pertinacity. Burke, who was a Conservative by philosophy as well as instinct, urged the duty to " venerate where one cannot presently comprehend." It was an attitude of mind that never came easy to Darling.

With his mind thus in tune with Conservative politics, and the way made smoother by the inheritance of Mr. Menelaus's fortune, he was able to look about him for a constituency. Then, as now, it was not a matter of great difficulty for clever and fluent young barristers to find constituencies in which the opposition was strongly entrenched. It would, of course, be unthinkable that any local tongue-tied Alderman should be deprived of the opportunity of mutely serving a safe constituency in Parliament, merely in order to provide a member who could add something to the debates in Parliament, who could effectively represent his constituency, and who could contribute anything to the national life. It goes without saying, therefore, that Darling was not given a safe seat ; nor, to do him justice, would he have desired it. It happened, however, that in the autumn of 1883 the Conservative citizens of Exeter were lo king for a candidate to join Mr. Northcote as Conservative standard-bearer in the election for the two seats by which, at that

time, the city was represented. Both seats were in the hands of the Liberals and the majority was some five hundred—formidable enough in a place like Exeter, in those days of restricted franchise. The prospect, however, was good enough for a young man who wanted a fight, and thither Darling duly repaired in October, 1883, to face his adoption meeting. This took place at the Victoria Hall, one of Exeter's largest buildings.

On the night of the meeting it was crammed to overflowing with an audience composed, it is true, of Conservative supporters, but of supporters who were quite ready to be critical; for Mr. Northcote was a popular local man, and constituencies have an inherent, if illogical, distrust of the carpet-bagger. Darling, however, was a fluent speaker, which was a distinguishing feature in the 1880s when many members reached Parliament with even less pretence to rhetorical competence than their successors of today. His easy style and characteristic sarcasm quickly won over his supporters, who realised that in him they had a champion not to be upset by Radical heckling. He told his audience that the Liberal Government had perverted chronology and seemed to think that A.D. stood for the Age of Dilke and B.C. for Before Chamberlain. Exeter Conservatism was satisfied. Here was a man of wit, fluency and forceful speaking, and above all of impeccable orthodoxy. This last was of great importance in the Party of those days—it always is—especially since a group of aristocratic young men, who really ought to have known better, had constituted themselves into a semi-independent Fourth Party, which launched guerilla attacks and seemed to think that the Conservative Party should be infused with a popular ideology and a programme for the working classes. Clever young men, therefore, were suspect in the 1880s in the Conservative Party—they always are. But Darling, they were relieved to find, was not only clever, but was orthodox. And as for being a carpet-bagger, there was Mr. Northcote to supply the popular local touch; and for what other purpose existed the admirable arrangement of double-barrelled constituency representation if not to admit of a combination of worthy, though perhaps rhetorically hesitant, local popularity, with the cut and thrust of metropolitan dialectics?

The omens looked, therefore, not wholly unfavourable for Darling's Parliamentary career. But circumstances—in the shape

of the Liberal Government—intervened in the unpleasant way in which Liberal Governments were wont to intervene in the days when there were Liberal Governments. They framed a measure known as the Redistribution Act, of which the object was to give representation to more crowded areas at the expense of some of the older seats. One of the unfortunate constituencies to be deprived of dual membership was Exeter. Northcote was a local man and an old campaigner in the district, and so, of course, it was Darling who had to retire.

He was given another chance by the very agency responsible for his disappointment, a piece of copybook-maxim justice that is generally all too rare. The new Division of South Hackney was called into existence by the Act of the Liberal Government. South Hackney was a division composed of a predominantly Liberal electorate. To contest it the Hackney Liberals secured no less doughty a champion than Charles Russell, Q.C., fashionable leading counsel of the day, powerful orator and later to be both Attorney-General and Lord Chief Justice. Whom were the Conservatives to enter in the lists against this formidable legal Liberal? No one of Russell's own standing on the Conservative side would deem it worth his while to undertake so forlorn a hope. But on the other hand, if Hackney Conservatism was not to be disgraced, a ready speaker and a gallant fighter had to be found. Darling's reputation had gone before him. He possessed just those qualities that were needed for this particular contest, and, since losing Exeter, he was politically disengaged. Would he contest South Hackney? It did not take him long to make up his mind. An election was expected shortly and he wanted to be in the fight. He signified his assent and was officially adopted to oppose Russell.

The election came in the autumn of 1885, and immediately on his return from his honeymoon Darling and his wife went down to Hackney. He opened his campaign, as was appropriate, by addressing a meeting of the combined Conservative committees and active workers of the South Hackney constituency. This meeting, it is pleasing to be able to record, was perfectly unanimous. Unfortunately not all the public meetings he held had this same pleasant unanimity. There was heckling in plenty and a certain amount of rowdyism; but heckling was a thing which Darling's quick wit enabled him to turn to the disadvantage of the heckler. Thus,

referring to Mr. Joseph Chamberlain, he said that he had sought a position in the Cabinet with Lord Hartington, whom he had characterised with the sobriquet of Rip Van Winkle and with Mr. Goschen whom he had likened to " a skeleton at an Egyptian Feast." Night after night Mr. Chamberlain sat with such men as Mr. Morley, Sir Charles Dilke and Mr. Bradlaugh. At this someone interrupted, shouting, " There are worse men than Mr. Bradlaugh." " I don't doubt it," retorted Darling at once, " because I am not familiar with all the bad men." On another occasion he quoted from the Radical programme which stated that every shilling of Church property might be devoted to secular purposes; at this someone shouted, " Making cheap boots." " Yes," came the instantaneous retort, " for then they can still imagine that the money is used for the cure of souls."

But in spite of wit and vigour Darling was not able to capture South Hackney from Russell. The election was hard fought but without animosity between the two opponents, who were both members of the same profession, and personal friends. Immediately after his defeat Darling wrote to congratulate the victor, who replied at once:

10, New Court,
Lincoln's Inn,
London, W.C.
27th Nov., 1885.

Dear Darling,

I lose not a moment in acknowledging your most kind and generous note.

Believe me I have no thought in connection with the election which lessens one jot my regard and respect for yourself. I mentioned on Wednesday the only point which touched me and on reflection I think that there was no substantial ground of complaint and that I was too sensitive.

The fight was, I think, fought in a way creditable to both of us.

I heartily reciprocate your wishes for our future friendly intercourse.

Pray remind Mrs. Darling for her comfort with my compliments, that while I am just getting into the sere and yellow leaf



LADY DARLING

you are young and vigorous with the future before you and after your plucky fight I have little doubt that a political opening will early be procured for you.

Dear Darling,
Faithfully,
C. RUSSELL.

The election of 1885 had been held while Lord Salisbury's Government was in office. The Liberal Government, which had been in office since 1880, had resigned in the summer of 1885 on being defeated in the House of Commons. Mr. Gladstone had resigned and it was actually a Conservative Government which went to the country in the Autumn Election. It was not only in Hackney, however, that the election went badly for the Conservatives. When the results were completed it was found that there were 333 Liberals against only 251 Tories, while Parnell held the balance with his 86 Irish Nationalist followers. Consequently, when the new House met, in January, Lord Salisbury's Government was defeated and Mr. Gladstone took office with a Liberal administration.

He appointed Sir Charles Russell his Attorney-General. In those days, of course, appointment to office necessitated re-election by the office-holder's constituency. The Hackney Conservatives were anxious that Russell should be opposed, and asked Darling to fight him again. Darling, however, considered that it was not fair to oppose a man in whom the constituency had just placed its confidence, merely because he had been appointed to office. So he declined. In this he was well in advance of his time, for it was forty years before the rule was amended and members appointed to office were exempt from the necessity of seeking re-election from their constituents. After making his decision Darling wrote to Russell:

February 7th, 1886.

Dear Attorney-General,

I have waited to offer you my sincere congratulations upon your appointment until it was quite certain that I should not have to oppose your re-election at Hackney. Now that Hackney is no more to me than Hecuba, I can tell you that your promotion to high office gives me a personal pleasure beyond that complete approbation which the Bar as a whole will feel at your becoming

their leader. You are to be opposed, I hear, and I suppose I ought to wish you may be beaten; but I shall allow myself the gratification of doing nothing by word or deed to hinder your election. My wife asks me to remember her to you, and, as I am not to be your opponent, hopes you may be successful.

Believe me,

Yours sincerely,

CHARLES DARLING.

Russell, however, did not benefit by Darling's magnanimity to the extent of getting an unopposed return. He was opposed by Mr. Scoble, who did not succeed in equalling Darling's poll. When the election was over Russell wrote to Darling:

10, New Court,
Lincoln's Inn,
London, W.C.

My dear Darling,

Many thanks for your cordial note. Pray tell Mrs. Darling that I am very grateful for her kindly message.

I am sure she will be gratified to see how much better a fight you made than my fresh opponent—even with the weight of the Irish business against me.

My dear Darling,

Faithfully,

C. RUSSELL.

Sir Charles Russell, however, was not long to remain Attorney-General and Darling was soon given another chance to oppose him. Mr. Gladstone was dependent upon Parnell for his majority, and introduced the Home Rule Bill, which he should have carried with Parnell's voting strength added to that of the Liberals. But the Irish support was purchased at the price of the continued allegiance of that wing of the Liberal Party which objected to this disruption of the Empire and came to be known as the Liberal-Unionist Party. On division, 93 Liberals voted against the Bill, which was defeated by 343 to 313. The question then arose: should the Liberals resign or should they recommend the dissolution of Parliament? There was much feeling in the Party in favour of resignation, on

the grounds that this would force the Tories to go to the country with a policy of their own. It was not to be, however. In the words of Morley: "Mr. Gladstone, however, entirely composed though pallid, at once opened the case with a list of twelve reasons for recommending dissolution; the reasons were so cogent that his opening of the case was also its closing." So that was that; the Liberals went to the country, and Darling to Hackney, in June, 1886.

This time, of course, there was no reason why he should not oppose Sir Charles Russell. In spite of his failing to meet their wishes in the by-election in the preceding February, he was asked, and accepted. Feeling in the country ran extremely high on the matter of Home Rule, and not least in Hackney. Russell was an Irish Catholic and threw himself with zeal into the campaign for Home Rule, while Darling came nearest to political passion in his strong hostility to breaking the imperial connection by granting Home Rule. He wrote a letter to the electors of South Hackney in which he said: "At present one question only is before the electors of this country; but that is, to use Mr. Gladstone's own words concerning it, 'the gravest and likewise the simplest issue which has been submitted to the nation for half a century.' That issue is whether Mr. Gladstone's scheme for granting Home Rule to Ireland shall become law or not. What that scheme is you know well. . . . It would hand the Government of Ireland over to those very men who, Mr. Gladstone himself but a short time since, described as 'marching through Rapine to Disintegration and dismemberment of the Empire in direct hostility one to the other.'

"You are aware that by the introduction of this scheme Mr. Gladstone has broken the old Liberal Party to atoms. He has deserted all its principles and now accuses those who hold opinions which he has held, but now abandons, of being seceders from the Liberal ranks. The accusation is too unjust to be tolerated by any fair-minded men, of whatever opinion upon other matters.

"I condemn this dangerous plan for the same reason as Mr. John Bright, Lord Hartington, Mr. Goschen, Mr. Trevelyan, Mr. Spurgeon, Mr. Courtney, Sir Henry James and Mr. Chamberlain, all alike condemn it. These men, Liberals every one, promised Mr. Gladstone and his new plan and his new Irish allies

their uncompromising resistance. This is a time to sink all Party differences—for my part I do so—on this question ; and I am ready to fight hard by the side of Mr. Gladstone's opponents, be they Liberals or Conservatives."

An election such as this was bound to be hard fought. It was fought, happily, without personal rancour between the two candidates, who respected each other. Their supporters, however, threw themselves into the contest with lusty enthusiasm, and rowdyism was frequent. The election was more fiercely and more closely contested than that of the previous autumn, for with the support of the Liberal-Unionist element in the constituency Darling had a chance of turning Russell out. It was a chance but not a good one, and after a feverish campaign, though Liberalism in the country was going down before the anti-Home Rule forces, Russell maintained his position intact. It was only, however, by a hundred votes, and Darling had scored something of a triumph in reducing the majority against him by 95 per cent. in the space of just over six months.

The declaration of the poll was made amid very turbulent scenes which finally resolved themselves into a general free fight, in the course of which Darling, himself, was in no small danger. The method of his rescue made a curious story. When he was surrounded, his supporters undertook to get him to the railway station. They had to fight their way through and it was only with great difficulty that they finally reached that haven with their champion. All fought well, but the rest were surpassed by one man, named Grey, who actually tried to commandeer a policeman's horse. When Darling and his supporters—shaken but safe—reached the lamp-room at the station Darling expressed his gratitude to his bodyguard. His agent reminded him of Grey's services and said that he had worked hard on the Conservative side during the election, although he was, like Russell, a Catholic and an Irishman. Darling was interested and grateful, and said he would like to see the man. A few days later Grey came to see him and Darling said : " You are Catholic and an Irishman like Sir Charles Russell. This election has been fought on the question of Home Rule and yet I have had no more devoted supporter than yourself. Why have you done all you have ? " Grey replied in a strong brogue : " Sure it wasn't for yourself at all. I didn't care a bit what happened to

you. But I saw in the paper that you married the daughter of the General who saved my life at the Siege of Delhi, and I wasn't going to see you murdered by thim blayguards."

Darling asked him the details, and Grey told how he had been in the Bengal Engineers at the time when General Greathed was a lieutenant in that regiment. He had been one of a small party, commanded by Greathed, detailed to attack the rebels in Delhi. The attack failed and an order was sent to withdraw. Unfortunately, the order did not get through and Greathed was unable to withdraw in time. However, he managed to get his party into a summer-house under the walls of Delhi, where they were surrounded by the rebels. Greathed said to his men, " We shan't all get out of this, but if you follow me some of us will." He then drew his sword and the rest followed him out. As they fought their way through, an Indian was about to sabre Grey and he would have fallen if Greathed had not cut the Indian down first with his sword. By this stroke he undoubtedly saved his man's life, and his presence of mind and vigorous action enabled the whole party to escape successfully.

If Grey did not actually save Darling's life in turn, he at any rate did much to rescue him from a very awkward position. It was one of many electoral assistances that Darling owed to his marriage.

Immediately after the election he received a letter of congratulation from Lord Salisbury, the new Prime Minister. " I cannot allow the election to pass by," he wrote, " without expressing to you my deep sense of the value of the contest you fought in South Hackney. To reduce the majority of so powerful an opponent as Sir Charles Russell in the way you did is wonderful, and speaks volumes for your energy and for the common sense of the working classes, who are rapidly becoming aware of the dangerous character of the proposals which Mr. Gladstone has brought forward."

It was not only the Conservative leader who appreciated the fight he had put up. In the following year the Conservative electors of Deptford required a champion for their by-election. Darling was invited by the local executive to stand, and unhesitatingly accepted. The occasion was unusual in this respect, that his Liberal opponent, Wilfred Blunt, the Irish poet, was at the time of the election in gaol for his connection with political disorders in Ireland. Darling was quick to see that the advantage of having one's opponent caged and, therefore, unable to address the electorate,

might well be more than offset by the sentiment for the underdog so potent in the English character. So he went round to see Mr. Arthur Balfour, at that time Chief Secretary for Ireland, and pointing out the circumstances and the bad effect it was having on his election, asked if he could let Blunt out. Balfour was very sympathetic but said that he was sorry, no interference with the Law was possible for even the most deserving of Party causes. It was Darling's first meeting with Balfour, of whom he was afterwards to see a good deal in the House of Commons; nor was their acquaintance interrupted when he left the House for the Bench. He had a great admiration for Balfour, but the quality in the other that made most impression on him was not so much his undoubted intellectual ability as the great courage that was manifesting itself at the time when Darling first met him. "Balfour," he said to me once, "was an utterly fearless man."

It was only natural that, with the champion of one side in gaol, the Dartford election should be even more roughly contested than that at South Hackney. Wilfred Blunt was represented by his wife, Lady Ann Blunt, who drove round in a carriage and pair exhibiting a placard, "VOTE FOR BLUNT," to the accompaniment of the vociferous enthusiasm of the Radical masses. But he was also represented by sterner elements in the shape of the tireless vocal support of the Liberal enthusiasts among the electorate, and the eloquence of the leaders of the Liberal Party was not denied to the man whom Tory justice prevented from speaking for himself. Among others who spoke for him was Sir Charles Russell, to whom Darling wrote: "My own feeling with regard to your going to Deptford to speak for Mr. Blunt is one of regret that he has so strong an advocate. . . . I also speak in Deptford tomorrow, which I arranged in the hope that a lot of fellows who hitherto have disturbed my meetings will be occupied in applauding you."

In hoping for undisturbed meetings Darling was optimistic and doomed to disappointment. There were many reasons why the election should be boisterous. It was a by-election; it was fought in a dockyard town; it was fought at a time when the Home Rule issue had inflamed political passions amongst all classes; and finally, the peculiar circumstances of Wilfred Blunt's absentee candidature made the Liberals feel that they had leeway to make up. The Conservatives, however, hit back with vigour and determination.

A broadsheet was issued urging the Deptford electorate, in rhyme, to vote for Darling. It started :

Deptford is for Darling,
  Her votes he can command,
He's faithful to his country's call,
  And loves his native land.
All traitors and all traitors' friends,
  Must very quickly shunt,
For Deptford is for Darling,
  And not for Wilfred Blunt.

The third verse ran :

For Irish agitators,
  We don't exactly care,
And so their representative,
  May seek a seat elsewhere,
We'll show him on the polling day
  That he's not in the hunt,
That Deptford is for Darling
  And not for Wilfred Blunt.

From this it will be seen that the Conservative supporters in Deptford could not be said to err unduly on the side of conciliatory methods. They took as their theme song for the election the popular and appropriate old ballad, " Charlie is my Darling." On this occasion it was prophetic, in spite of the rough handling that Darling and his supporters received. He, himself, was fortunate enough to escape with no worse assault than having his hat bashed in. But one of his supporters, Mr. Colepepper, had three of his teeth knocked out by a stone, while Colonel Graham, a veteran of an earlier conflict in the Crimea, was seriously wounded. Their sacrifices, however, were not in vain, for when the result of the poll was made known, Darling secured 4,345 votes to the 4,070 given to the absent Blunt. From an upper window Darling and his wife returned thanks to the surging crowds below, amid the triumphant strains of " Charlie is my Darling." Nobody could hear what was said, but nobody cared. After three disappointments Darling found himself a Member of Parliament at last. He was then thirty-eight years old.

CHAPTER VII

DARLING M.P.

EARLY in 1888 Charles Darling took his seat in the House of Commons. He was now economically independent and was, therefore, in a position to afford the time to be a fairly regular attendant at the House. He continued his practice at the Bar and his literary activites, but for the next few years politics claimed, perhaps, the major part of his attention.

He was never a great Parliamentary figure. He was not, in fact, long enough in the House of Commons to become one. Those who were in the House with him remember him as a vigorous partisan rather than as a politician with a large or original contribution to make. He was, however, regular in his attendance and by no means a silent member. His contributions were, for the most part, on legal subjects and on the great issue of the day, Home Rule for Ireland. In social and economic matters he played little part, for neither then nor at any time did he pretend to any knowledge of economics.

The Home Rule controversy was at its height at the time when Darling was in the House of Commons, and the feeling in all three parties was intense to the point of bitterness. Darling was a convinced opponent of Home Rule, and on this issue felt more deeply than on any other political question. It followed that he was by no means approved of by the Irish Party, and to only a slightly less extent was he disapproved of by the rank and file of the Liberal Party. In those days, however, people were not popular with the entire House of Commons irrespective of party affiliations in the way they are today. No promiscuous camaraderie could exist side by side with the hatreds and the fanaticism begotten by the Irish Question. Members of the opposing parties had little or no social contact either inside the House or elsewhere, and the bulk of the

Liberal members of that time could not have exchanged five minutes conversation with Darling in their lives. There were, of course, exceptions, chiefly from the ranks of his own profession. One of his greatest friends in the House of Commons was Frank Lockwood, Q.C., later to become Liberal Solicitor-General. But, as we have seen, Darling and Lockwood were drawn together by interests other than politics ; they even had a scheme to redecorate the Law Courts together, which unfortunately did not materialise.

On the whole, however, popularity in the House of Commons in those days meant popularity only with one's own party. Within these necessary limitations Darling was a popular House of Commons man. The rank and file of the Conservative Party liked not only his wit but the vigorous dialectics in which he indulged and the fearless way he provoked and engaged the redoubtable verbal duellists of the Irish Party. He flew at higher game too, and frequently crossed swords with Sir William Harcourt, a warrior by no means gentle in controversy. On occasion he even had the temerity to tease the venerable Mr. Gladstone himself.

Darling was in many ways the ideal member from the Party point of view. He came down regularly to the House from his chambers in Dr. Johnson's Buildings, and, what is more, sat regularly in the debating chamber. He intervened fairly frequently in debate but rarely at length. He engaged the enemy vigorously but avoided the besetting temptation of Parliamentary snipers to pick off a few of his own side. When first in Parliament he surprised the House, which knew his reputation as a forensic wit, by the seriousness of his speeches. It was not until he had earned the right to be regarded in a serious light that he treated the House to examples of his humour. He was ever alive to the dangers which threaten the professional humorist who sometimes wants to be taken seriously, and both in his first entry into Parliament and on his first experience of judicial office he was careful to give no opening to those who would be anxious to write him off as a mere buffoon.

The social centre of the House of Commons is supposed to be the smoke-room. Not once in his nine and a half years in the House did Darling enter it. I remember expressing surprise at this ; " But surely," I said, " the other members used to go there, didn't they ? " " Yes, " he replied, " but they smoked." I, who have always viewed the smoke-room rather as the pulse of Parliamentary

activity than as an opportunity for smoking, was rather taken aback by the simple logic of this reply. But Darling, through the course of his long life, had an inveterate hatred of tobacco; he not only never smoked himself, but whenever possible he avoided contact with those who did. When not actually in the debating chamber he would probably be in the library of the House; or, if there was nothing of sufficient importance or interest to detain him there, he would walk down to the Carlton Club, to which he had been elected in the 80s, and where he was regularly to be found.

When Darling entered Parliament the Conservative Government was in power, so the majority of his speeches were made in the capacity of counsel for the defence. His maiden speech, however, was made on the Oaths Bill which had been introduced by Mr. Bradlaugh, the atheist member for Northampton whose election and taking of his seat had been invested with such long and violent controversy. The object of the Bill was to allow people who objected to being sworn, to affirm. Darling's speech was moderate and carefully prepared. He quoted Professor Freeman, who as a Whig historian would be acceptable to the movers of the Bill, with reference to Harold's oath of fealty to William of Normandy, to the effect that an oath is, in fact, required among all nations and under all religions to bind mankind. "From my own experience," said Darling, "I have noticed, particularly in the neighbourhood of the Principality, in Shropshire, and in Monmouthshire, that there are many persons with particularly scrupulous consciences who, nevertheless, do not intend to tell the exact truth and who go through various dodges to get out of taking an oath, though all the time subjecting themselves to a prosecution for perjury." He went on to say that if there was any prospect of an amendment to the effect that any person who was unwilling from a conscientious objection to take an oath should, if the judge were satisfied of the sincerity of the objection, be allowed to affirm, he would support the Bill.

This speech met with considerable support. Sir Richard Webster, the Attorney-General (later, as Lord Alverstone, to become Lord Chief Justice), complimented him upon it, and even Sir William Harcourt said, "I have heard with great satisfaction the very moderate and reasonable speech of the honourable and learned member for Deptford." Mr. Bradlaugh signified his assent to an amendment of the sort suggested by Darling being put in Com-

mittee. On this understanding the second reading was carried by 250 votes to 150, Darling voted with the majority.

His next intervention in debate, which came in the following month, was not delivered in the same quiet and agreeable atmosphere. He was speaking on the Criminal Law and Procedure Act of 1887. The Opposition had been contending that it was almost unknown for appeals from the decisions of magistrates to result in an increase of sentence, but averred that this was being made a practice in Ireland, and referred especially to the recent case of Father McFadden, which was causing much stir at the time. Darling said that he spoke from experience gained at Quarter Sessions " where I have practised for more years than honourable members might think." The reason why there were very few cases of aggravation of sentences on appeal was that there were very few appeals from Quarter Sessions in cases of theft and so on. " I have frequently been concerned with appeals against orders of affiliation, and in cases of conviction of publicans for offences against the Licensing Law, but I do not remember a case, while I practised at Quarter Sessions, in which there was an appeal from a conviction in a case of theft of the sort which usually came before magistrates sitting as a court of first instance." For that reason it was not remarkable, therefore, that the Law Officers of the Crown could not put their fingers on precedent.

Mr. Bradlaugh and Mr. Shaw Lefevre had not argued on a legal basis but on an appeal *ad misericordiam*. " That is the worst of these Irish questions. They do not say that these people have suffered illegally through having their sentences increased; but they choose to say that the Law should not prevail because Father McFadden is a philanthropist and one of the best men in Ireland. It is very unfortunate that everyone who gets into trouble in Ireland should turn out to be a philanthropist and one of the best men in the country. . . . Their grievance is a legal one or no grievance at all, and it would much better become them to take their appeal to a Higher Court than for their friends to come to the House of Commons and speak of them as philanthropists who have been put into third-class carriages like pickpockets, as though no respectable people ever travel in that way."

This time Darling drew Sir William Harcourt's fire, and he had the satisfaction of being told that he had completely misunderstood

the question which was one of " turning Crown Law into an engine of brutal and ferocious oppression." But Balfour, Chief Secretary for Ireland, backed up Darling and attacked Sir William. This brought Mr. Gladstone to his feet. Darling dared to interrupt and correct him, with the result that the G.O.M. referred to " the honourable and learned gentleman with his legal knowledge and the high position from which he looks down upon the ignorance of us laymen."

On the Criminal Evidence Bill Darling again succeeded in incurring the hostility of the Irish Party. The Bill aimed at making the prisoner a competent witness in his own defence in a criminal trial ; at that time, it must be remembered, prisoners could not give evidence—a state of affairs surviving from the old practice whereby not even the parties to a civil action were able to give evidence. Darling expressed the common-sense point of view in saying that it was absurd that an accused person—who had most interest in the issue and probably knew more of the facts than anybody else—should not be able to give evidence. He suggested that the only reason why the Irish members objected to the innovation was that they were afraid that if it were introduced the guilty would be convicted. This enraged Mr. Flynn, the member for Cork, who said that though it was quite possible that the honourable and learned gentleman had a very large experience of Quarter Sessions, it was painfully obvious that he had no experience whatever of the administration of the Crimes Act in Ireland and of the scandals that had disgraced the administration of Justice in certain courts. " The honourable and learned member," he said, " has acquired with fatal facility an eloquent sneer at everything Irish."

At the end of the session he was again embroiled in Irish affairs when he came to the rescue of the Attorney-General, who was being criticised by the Irish members for acting as Counsel for *The Times* in the Parnell enquiry, which resulted from the printing in that newspaper of what turned out to be the Pigott forgeries. Tim Healy, himself a barrister, was most prominent in the attack and said that he would strip his stuff gown off his back rather than do what the Attorney-General had done. To this Darling neatly retorted, " I can only suggest that the honourable and learned member would do well to divest his speeches of similar material, of which they are largely composed."

Not all Darling's interventions in debate were concerned with the Irish Question, however, for in this Summer Session of 1888 he spoke on the Local Government Bill, and several times on a Libel Law Amendment Bill. A Mr. Smith of Flintshire had suggested that it would not be necessary to set out in an indictment for libel any blasphemous, indecent or scandalous passages ; these, he proposed, should merely be pointed out to the Jury in the publication itself. The reason for this change was to prevent the copying of such passages by " large numbers of clerks, young men or it might be boys in law stationers' offices." To this typical effort at muddled grandmotherly legislation Darling replied, that if this principle was carried to a logical conclusion many criminal cases would be left untried for fear they might produce a bad effect on the minds of policemen, constables, or ushers.

In the year 1889 he spoke on such varied subjects as prevention of cruelty to children, the hop industry, the International Labour Conference, foot and mouth disease, and the rights of common in the New Forest, a subject of particular interest to him as he had recently made his home there.

It was in 1890, however, that he had the controversy with Sir William Harcourt which brought him into Parliamentary prominence. The matter arose from the debate on an Irish Jury Bill which was before the House. Darling quoted a pamphlet written by an Irish Nationalist barrister to the effect that Juries were entitled to disregard the directions of a Judge on a point either of Law or of fact. When he quoted this, Sir William Harcourt interjected " Hear, hear." Darling pointed out that though Harcourt had had some experience of the Parliamentary Bar he had not had any in criminal work. In fact, when Juries disregarded the directions of a Judge on a point of Law their verdict could be set aside. Harcourt, in reply, said in his habitual conciliatory manner, " I cannot allow to pass without challenge such an extraordinary and ignorant statement as has been made by the honourable and learned gentleman, of which a layman ought to be ashamed, let alone a lawyer," and went on to assert that it was the foundation of English liberties that in a criminal trial a jury could disregard a judge's directions.

The controversy was then transferred from the floor of the House to the columns of *The Times*. Darling wrote a long letter, on

May 27, to which Harcourt vigorously replied in a letter filling a column and a half. The correspondence was strenuously conducted, but was perhaps more productive of heat than of light, for to use the phraseology of the Courts, the parties were not entirely *ad idem*. It really came to this: Darling said that Harcourt erroneously asserted one thing, and Sir William answered by strenuously asserting another. The second letter which Darling sent, in the words of *The Times*, "continues and we trust concludes a warm and lively correspondence." The editor was doomed to disappointment. Darling and Harcourt continued to assail each other in the paper's columns and no less a person than Sir Harry Poland, the famous authority on Criminal Law, entered the lists on Darling's side. He summed up the situation thus: "No one can doubt that the Jury have the power to disregard the Law and disregard their oaths and to render a verdict contrary to both Law and evidence; and in this respect, and this respect only, they are the judges of the Law. . . but it can hardly be seriously contended that the Jury has the right to do all this." As to Darling's main contention, he had the support of no less a man than Lord Hardwicke, the former Lord Chancellor, who said: "It is of the greatest consequence to the Law of England and to the subject that these powers of the Judge and Jury be kept distinct; that the Judge determine the Law and the Jury the facts; and if ever they come to be confounded it will prove the confusion and destruction of the Law of England."

It is not to be expected that Darling convinced Harcourt, or Harcourt Darling. But his successful conflict with so redoubtable an antagonist did much to enhance his Parliamentary reputation and an evening newspaper of the day made him the first subject of a series of biographical sketches of young Members of Parliament. "Mr. Charles Darling," it said, "shares with Sir Michael Hicks-Beach the fame, and divides with him the honour of being able at the shortest notice to act upon Sir William Harcourt as a red rag upon a bull. Possibly it may be Mr. Darling's fate to mount the Parliamentary ladder, or at any rate the lower rungs of it, as so many other politicians before him—notably Lord Randolph Churchill—by scoring freely off a senior man in the House of Commons."

Later on, Darling scored another Parliamentary triumph, this time on the floor of the House. He spoke in January, 1891, for

forty-three minutes in opposition to the Conspiracy Law Amendment Bill which was brought forward by the Liberals to exempt Trade Unions from some of the conspiracy provisions. This speech was a great success and immediately it was delivered Sir Robert Penrose-Fitzgerald wrote to Mrs. Darling saying: "Your husband made one of the best speeches we have heard for some time in the House of Commons today." The effect upon the Press was as favourable as upon the director of the Property Defence Association. The *Daily Graphic* wrote: "A lawyer of a very different stamp is Mr. Darling, who looks so absurdly juvenile that it is hard to believe that he is not merely a full-grown barrister but a Q.C. His speech was the best that has so far been delivered this session. His Law may or may not have been sound, but his arguments were well put, his illustrations apt and his quiet touches of humour served to enlighten the debate. Poor Mr. Fenwick (the seconder of the motion) was unmercifully treated. He was made to explain his speech, explain his explanations and contradict himself till he got hopelessly confused and realised the terrors of cross-examination at the hands of a skilful lawyer."

Before the end of the Parliament Darling had secured the compliment of the vigorous hostility of the Irish party, coupled with considerable respect from his own party as being a man who was never afraid to engage the Irish when they offered battle. It is only fair to say that both sides entered the conflict with zest, and after Darling had said in a speech that treason aided by dynamite was the most detestable of all crimes, Tim Healy replied that this speech made one understand a dynamitard. "If there is anything," he said, "calculated to drive a man into rebellion it is the notion that he is being ruled by 670 gentlemen like the honourable member for Deptford."

The electorate of Deptford were soon to have the opportunity of revising their choice if they so desired.

By the summer of 1892 the Parliament elected in 1886 was drawing to its natural end. At the end of June it was prorogued, and Darling had again to face the electorate of Deptford. Like all the elections in which he took part it was fought with immense vigour. This time, however, his opponent was no longer Wilfred Blunt the Irish Poet, but a more prosaic and orthodox Liberal in the person of Lord Edmund Fitzmaurice. The election was again fought

primarily on the absorbing topic of Home Rule for Ireland. But in Deptford there was also the important local issue of the cattle trade, and Darling's voting card gave pride of place to this. " Fitzmaurice in office helped to pass the Act by which cattle are excluded from Deptford. Darling proposed its repeal which Gladstonians prevented." Side by side with the adjuration to vote for Darling was a pictorial exhortation, of which the centre was a picture of Darling flanked at the four corners by portraits of Lord Salisbury, the Duke of Devonshire, Mr. Arthur Balfour and Mr. Joseph Chamberlain. At the top was a crown and the Union Jack, with two hands clasped above the motto, " Union is Strength." The portrait of Darling himself was surrounded by pictures representing Justice, Law, Peace, and Plenty. Justice is represented by a Victorian matron holding the familiar scales ; Law by a slightly younger edition of the same lady, studying a book ; Peace is a demure and apparently naked child of tender years ; Plenty is a child of the same age and in the same state of nature but rather plumper and more lively. At the bottom, to complete the allegory is a lion, placed between the heads of Balfour and Chamberlain and impressively labelled " Security."

The effect of this comprehensive document was decisive on the electors of Deptford. But not before there had been a fierce and spirited contest on both sides. Darling again massed all the vigorous dialectic and powerful invective that had characterised his former elections, and once again he was assisted by the quieter but effective propaganda of his wife. Once again the air of " Charlie is my Darling " was heard triumphantly in the streets of Deptford. In the event, he increased his majority from 275 to 565, the final figures being :

Darling	5,298.
Fitzmaurice	4,733.

A contemporary described him at this time as " small in stature, youthful in appearance, pert in manner, and strong in language." He is said to have emitted more personalities in the course of his different elections than has ever been done out of Eatanswill. Be this as it may, he had a very strong and vigorous platform technique. He did not err on the side of mildness in Parliament, as we have seen. And as for his platform eloquence,

the following example, taken from a rather earlier period, will serve to shew what he could do when he tried. It is from a speech made by him at the Midland Conservative Club at Birmingham in 1885, attacking Joseph Chamberlain, when he was still a Radical. "Mr. Chamberlain lives so near at hand it would be impolite to pass him over. He serves in the world exactly that office which physiologists ascribe to horrible stinks. A dead or decaying dog sends forth a nauseous smell in order to warn us that it is a dangerous thing. You know that the Radical Party is a festering and noxious sore; you might not know it, if Mr. Chamberlain did not perform the office of the stink."

Darling's feat of increasing his majority was particularly creditable, for the election as a whole went against the Conservative Party. The Liberals came back with a majority in Parliament and Mr. Asquith brought forward a motion of no confidence in the Conservative Government. This was carried by 350 votes to 310, and the Conservative Government fell. It was succeeded by a Liberal administration with Gladstone as Prime Minister, Darling's old opponent Harcourt, Chancellor of the Exchequer, Rosebery, Foreign Secretary and Asquith, Home Secretary.

The new Government did not meet the House of Commons until early in 1893. The great political interest of this year, to the virtual exclusion of everything else, was the Home Rule Bill. Mr. Gladstone had decided to introduce Home Rule for Ireland and this was bitterly opposed by the Conservative Party. In the atmosphere of opposition and intense party passion Darling found himself quite at home. The Irish issue had always been his greatest interest in politics, and it was an interest that had not been diminished by the hostile passages with the Irish faction he had had in the last Parliament. The Bill was introduced early in the year and he spoke frequently. He made a long and lucid speech on May 8, in which he moved an amendment to include in the Bill a clause enacting the supremacy of Parliament over the new Irish Parliament to be set up. This speech contained considerable criticism of Mr. Asquith, and it was not long before a newspaper said, "Mr. Darling of Deptford considers it his mission to chastise the Home Secretary."

On the following day he protested against calling the new Irish legislative body a Parliament; there was only one Parliament, that

at Westminster. Two days later he was summarising the reasons for voting against Clause One of the Bill. The theory of the Liberal Government seemed to be that all demands of the Irish members should be conceded because Irish susceptibilities had to be considered ; it was time to remember that the English people had their susceptibilities as well as the Irish.

" English members," he said, " are entitled to some consideration in this House because they express their opinions articulately whilst Irish members do not." He quoted the Secretary for Scotland as saying " that the game of Law and Order in Ireland was up." The principle on which this Home Rule Bill was apparently based was that we ought not to try to govern any more, but should yield everything asked without making the bargain too plain lest the public should revolt. As for the assurances of Irish members, it was impossible to place any reliance on them, as they always came back and asked for more. They had not disavowed the political methods of Parnell ; so were their words to be rated higher than his, who had said on oath that he had deceived the House ? This last observation provoked a storm amongst the Irish members ; but Darling was on his feet again a few days later moving an amendment that the Acts of the Irish Assembly should always be read subject to Acts of Parliament and should be void in so far as they were inconsistent with them.

A little later in the summer he had another clash with Sir William Harcourt, now Chancellor of the Exchequer. Darling accused the Government of changing its opinion on the subject of the retention of Irish members in Parliament. If they were given a Parliament of their own and at the same time were represented at Westminster as well, they would have full liberty to interfere in English affairs whilst the English would not be able to interfere in theirs. Sir William Harcourt had said that the opinion of the country was that the Irish Members should be retained because, as we were casting a burden on Ireland by giving them their own affairs to manage, we ought to give them some compensation. This brought Sir William Harcourt to his feet at once. " Of course," he said, " I did not put it as a serious proposition. I used it as an incidental remark."

DARLING : The Right Honourable gentlemen calls letting out the truth " making an incidental remark." We have it now that

we are actually doing what is a disadvantage to Ireland, and that we ought to give it compensation.

HARCOURT: No, no, I said nothing of the kind. I said it was an advantage to us to get rid of them. The observation about compensation was made incidentally and ironically.

DARLING: The Right Honourable gentlemen's incidental observations will get him into trouble in Derby, I think. He distinctly told us we were putting a burden on Ireland, and therefore we must give them compensation.

HARCOURT: Again I must contradict the Honourable gentleman. I did not say anything of the kind. I hope there is an end of it.

DARLING: No, no, there is not an end of it.

HARCOURT: Well, if the Honourable member does not observe the ordinary courtesies of the House, I can't help it. When a gentleman said " I did not state that," it is the rule of the House to accept the statement.

DARLING: I observe the ordinary courtesies of the House.

At this Sir William Harcourt rose and left the House, but Darling continued, quite unruffled by the indignant exit of the Chancellor of the Exchequer. " Long ago," he said, " I demolished the argument of the Right Honourable gentleman, and now I have got rid of him, himself."

Harcourt's actual words which gave rise to the dispute were these; " In my opinion when we give them the right of managing their own affairs we are not giving them a privilege. We are imposing upon them a burden which now rests upon our own shoulders; and so far from admitting that we ought to obtain some compensation for the course we are taking, I think that we ought to give them some compensation for imposing that burden upon them." It will be seen from this that Darling was fully justified in the interpretation he put upon the remark, and the views he expressed upon it.

No amount of Tory argument or Tory eloquence could prevent the passage of the Home Rule Bill in the House of Commons. Its Second Reading was carried by 347 votes to 304, after a debate in which Darling's friend Carson, who was then sharing Chambers with him in Dr. Johnson's Buildings, took part and in which, also, Darling heard Mr. Austen Chamberlain make his maiden speech. By

September the third reading had been carried in the House of Commons by 301 votes to 267. But it could make no progress against the solid phalanx of Imperialist opinion in the House of Lords and there the Bill was soundly defeated. For the time being, Home Rule as a practical proposition was in abeyance, and with it the greatest point of controversy in Parliament.

Darling was active in many other matters. He spoke three times on the Local Government Bill and also on the Employers' Liability Bill. It was also in this Parliament that he made his best Parliamentary witticism, which has remained in the minds of those surviving contemporaries who sat with him in the House, even when they can remember little else about him. Gladstone, as Prime Minister, was Leader of the House of Commons, with Harcourt as his deputy. As the former was by then a very old man it was his custom to lead the House until dinner time and then to leave it to Harcourt to carry on in the evening. Darling's comment on this position was ; " Is it not a great inconvenience that there should be a greater light to rule the day and a lesser light to rule the night ?"

In 1894 he spoke several times on the Finance Bill and on the prevention of cruelty to children. Another matter in which he entered with heart and soul was in defence of Sir Henry Hawkins, the great sporting judge who was accused of adjourning his court before Newmarket races and on Derby Day. Darling pointed out that the adjournment had taken place at the desire of, and for the convenience of, litigants and counsel who had all agreed. In a Liberal House of Commons horse-racing was not, of course, very popular, and when there was discussion on a statue of Oliver Cromwell in the Palace of Westminster, Darling asked : " Is the statue of this eminent man omitted on the ground that we learn that he was an owner of race-horses ? "

In the early part of 1895 Darling interested himself actively in the matter of Jabez Balfour, the famous swindler. He addressed no fewer than eight questions, not including supplementaries, to the Government on different occasions, urging them to proceed with the extradition and to bring Jabez Balfour back as soon as possible. At the same time, he spoke vigorously against the prejudicing of his chance of a fair trial by the newspaper reports and placards about him ; and protested against the form of journalism, then in its

infancy, which allowed it. On January 24, he wrote a letter to *The Times* headed " A plea for Jabez Balfour " :

To the Editor of the Times.

Sir,

May I be permitted to say a word in favour of justice to an unpopular person—in other words do an unpopular thing ?

No one who reads the London newspapers—or for that matter even their placards in the streets—can have failed to notice the absolutely unprecedented manner in which it has seemed good to most of them to deal with the case of Mr. Jabez Balfour, a prisoner awaiting his trial on a grave criminal charge. How, if the hourly comments, caricatures and allegations of these journals be not at once discontinued, is this man to have an unprejudiced trial in London ? . . . . No lawyer can doubt that should this hounding down of an accused person have occurred in some distant country town, his case would have been removed elsewhere in the interests of justice. What should be done when the Press of London is the sinner I will not pretend to say, but certainly the Attorney-General must consider it, for as it is his duty to get this man tried, so it is his obligation to see that he is fairly judged.

Pardon, Sir, the imputation which is conveyed, by my addressing to you this letter, that you are not abreast of the " New Journalism."

Your obedient servant,
Charles Darling.

The Liberal Government was not destined to last much longer ; but before they quitted office they found time for the introduction of a Bill for the payment of Members of Parliament. Darling, who believed in the theory of a leisured class anxious to bear the burdens of government, was strongly opposed to the idea. It had been argued that the House of Commons should be brought into line with the practice of the new London County Council whose members at that time were paid. Darling said that he could imagine no stronger argument against the Bill, and cited examples of lapses of members of the London County Council. " Three," he said, " have been sent to gaol for dishonesty, one for stealing a railway ticket, one for stealing a shilling from a lady of easy virtue, and the third for some other unconsidered trifle." He could see all sorts of difficulties in

practice. Parliament would become like the Trade Union Congress and the questions they would be faced with would be questions of this sort: "Is an M.P. to receive a minimum wage? Is overtime to be permitted? Are we to be opposed to evening sittings in winter sessions? Are there to be two shifts of members, or must one shift be paid for overtime? Shall we all receive the same wage?" He concluded by saying that before burdening the tax-payer further they ought to see whether a smaller remedy than that proposed would not meet the case. The project was defeated and Members of Parliament had to wait fifteen years for their pay.

This was in March, 1895. In the following June the Liberal Government was defeated by seven votes on a snap division arising out of a motion to reduce the salary of the Secretary for War on account of the cordite shortage. The Government rather surprisingly resigned and a Conservative Government took office. Being a minority in the House, they of course appealed to the country. This time, however, the tide was flowing strongly in favour of the Conservatives and the Liberals were heavily defeated all over the country. Darling himself had no difficulty in holding Deptford, where he succeeded in increasing his majority to four figures.

Darling himself had no office in the Government and in consequence Parliament was less interesting to him than it had been while in Opposition. Besides, the Irish Question was not now so prominent and though, when not on circuit, he continued to attend regularly, his interventions in debate were fewer than hitherto. He did, however, speak in support of the new Colonial Secretary, Mr. Joseph Chamberlain, in the discussion on the Jameson Raid, and of his decision to reverse "the whole policy of Ministry after Ministry —namely to maintain the claim of this country to be the paramount power in South Africa."

Early in 1897 he spoke once on a matter of foreign policy but this was exceptional. His other participations in debate were connected rather with legal matters. He spoke, for instance, on the Law of Evidence (Criminal Cases) Bill and on the Court of Criminal Appeal Bill. It had been urged, he said, that the lightness of the sentences passed by Mr. Justice Hawkins was a reason for voting for the Bill. It was therefore intended to counteract the humanity of Mr. Justice Hawkins and he himself would vote against it. In this

speech he discussed the position of Juries and said that he did not think there was any real grievance against their verdicts, though he disclaimed any exaggerated regard for them. He quoted La Rochefoucauld, always one of his favourite authors, as saying that the innocent were very far from receiving the protection everywhere accorded to the guilty.

This was Darling's last intervention on matters of public interest in the House of Commons. His only other participation was a personal explanation of a circumstance of the greatest importance in his own career.

CHAPTER VIII

DARLING, Q.C.

Breach of Promise and Defamation

CIRCUMSTANCES combined in the early 80s to suggest to Darling's mind the advisability of taking Silk, that is, becoming a Queen's Counsel. Menelaus's death left him, as we have seen, in a position of economic independence and so he was able to take with a light heart the risk which that step necessarily involves. The political career, which the same circumstances rendered possible and his own ambitions rendered desirable, would also be much more conveniently combined with a practice from the front row. It is difficult for a junior member of the Bar, if he is in successful practice, to be a regular attendant in the House of Commons. He has a great deal of what is known as paper work, i.e. pleadings, opinions and so on, to attend to after the sittings of the Courts. He is expected, too, to be at the beck and call of solicitors, who naturally resent the absence, on business so remote and unimportant as the deliberations of the national legislature, of someone whom they wish to consult on a £10 claim in the County Court. With a Queen's Counsel—or a King's Counsel as he would now be—the position is different. He is not concerned with pleadings and only occasionally with opinions. When the sitting of the Court is over he is free to attend Parliament; and, furthermore, as a Silk it is rather expected of him to be in Parliament. For, by a curious metamorphosis, though a junior's presence in the House of Commons merely proclaims his inaccessibility and distracted interests, when that said junior becomes a Silk, that same presence in the House advertises his great rhetorical powers and public importance.

A lawyer, therefore, who wants to be a politician should take Silk. Darling was no exception. He wanted to go into politics

and for that reason desired Silk, if he could get it. The right to wear the silk gown is in the gift of the Lord Chancellor. Darling had to ask himself whether he had sufficient practice to justify his application. He had not, as we have seen a fashionable metropolitan practice nor was he making a very large income at the Bar. But his work on the Oxford Circuit was steady and continuous and had increased from year to year. A man who practises exclusively on his Circuit is naturally less in the public eye than a man with a substantial London practice. But then, as now, there were " Circuit Silks " whose junior practice lay on Circuit and who intended to rely on the Circuit for their work as leaders. (It may parenthetically be noted that a Junior may be a " local," *i.e.* have his Chambers in one of the Circuit towns. A Silk may not do this, as he is obliged to have his Chambers in the Temple. There is, however, nothing to prevent a Silk doing a Circuit practice from his Chambers in the Temple.) So Darling made up his mind that he had sufficient practice to support an application. Further, in the autumn of 1885 the Conservative Party were in office, which meant that there was a Conservative Lord Chancellor. Darling was fighting an election as a Conservative against the famous Liberal Queen's Counsel, Charles Russell, a circumstance that would obviously do nothing to impede his chances of getting Silk from the Conservative Lord Chancellor. The autumn of 1885, therefore, was the psychological moment for Darling, and he took it. He was successful, received his patent from the Lord Chancellor, made his tour of the Courts, bowing to the Judges, and was duly a Queen's Counsel.

When Huddleston, his old chief, was made a Judge, in 1875, he gave Darling his silk gown and told him to keep it until the time came when he would be entitled to wear it. Darling, who was at that time a very young junior of less than two years' seniority, modestly demurred: but he kept the gown. Now that he had become a Q.C. himself, only ten years later, he got Huddleston's gown out of its place of storage and put it on. He used it as his ceremonial gown—Silks do not wear the real silk gown in court—from then onwards. In fact, for many years after he became a Judge he continued to wear it to dine on the Benchers' Table in the Inner Temple Hall. At last it became very ragged and tattered, but still Darling clung to it for its antiquity and old associations with his former master in the Law. When finally he yielded, after

the War, to the affectionate and half-humorous remonstrances of his family and friends and regretfully discarded it, it was nearly fifty years since he had received it from Huddleston and nearly seventy since Huddleston had acquired it on being appointed a Q.C.

Some barristers who, as a result of building up a large Circuit practice, acquire Silk, turn their attention to London and hope as leaders to storm the High Court in the Strand. Darling still remained largely faithful to the Oxford Circuit. His attention was now considerably distracted by politics and other things. Indeed, as we have seen, he fought three elections within the first three years of taking Silk, and thereafter, from 1888, he was a regular attendant in the House of Commons. However, he was able to combine with it a fair practice as a leader on the Oxford Circuit. Naturally, his practice from the front row did not have quite the same catholicity of comprehension as had his junior practice. We find a considerable decline in the extent of his criminal practice for in the majority of criminal cases on the Circuit, even in such serious matters as murder or manslaughter, leading counsel were not briefed. On the other hand, in such general civil litigation as libel, slander, breach of promise and the like, he became and remained quite busy.

In 1890 Darling appeared in a class of case which was fast becoming a speciality of his and continued to be so during his period as a Silk; that is to say, breach of promise. But in the case of *Day* v. *Roberts*, which occupied three days at the Birmingham Assizes in that year, not only was breach of promise alleged by the lady for whom Darling appeared but also fraud, slander and assault. It came about like this. The plaintiff, Miss Jenny Day, fell in with a propertied gentleman named Roberts, who was formerly an hotel-keeper but had taken to describing himself, with the optimism of his calling, a "gentleman." Roberts asked Jenny Day to marry him and she, no doubt thinking—and correctly thinking—that his property and gentility outweighed the disadvantage of his years, consented. They went through a marriage ceremony in March, 1880, at Roberts's house; but alas, the marriage was a mock one staged by Roberts with a bogus registrar. In the following January Roberts's brother, John, told the unfortunate lady that his brother's wife was still alive, and Roberts, being taxed with this, admitted that he had a wife but said that he did not know whether she was

alive or dead. A little later on, George Tebbutts, brother of the first wife, came and told Miss Day that his sister was dead. Roberts then agreed to go through a second ceremony and they were married at Lambeth Registry, in 1882.

For a time all went well. But in February, 1886, Roberts took to assaulting his "wife" and used to kick her in the stomach. Worse was to follow, however, for in the spring of 1887 he added threats of murder to his assaults, and finally turned her out of doors when she was pregnant, after kicking her in the abdomen as a valedictory gesture. She crept back at night and slept in the scullery. Next morning she left, taking a sovereign from the till. When this slender supply was exhausted she was admitted to the workhouse. There the Guardians not unnaturally tried to make Roberts support her as his wife. It then came out, however, that his first wife, a former Miss Tebbutts, was still alive and, accordingly, Miss Day had no claim upon him. All that she did get from him was a series of the most offensive Valentines and letters through the post.

In answer to this case, which Darling put before the Court, Roberts raised the defence that Miss Day was an immoral woman who had not required the sanction of the marriage tie to make her cohabit with him, and that she had, in fact, done so before any marriage ceremony. To this Baron Huddleston, who was trying the case said:

"Do you say she came to your house and got into your bed against your inclination?"

"Oh no, my Lord, I don't say that," said the defendant, valiant for the truth.

Roberts also suggested that she had had affairs with two schoolmasters before coming to him and had been prematurely delivered of twins; but of this academic tangle he offered no evidence. He said that she got drunk frequently and that he had no knowledge at the time of the second ceremony that his real wife was alive until he was told by Miss Day herself. As for the letters which he was supposed to have written, he said that, though these were not in Miss Day's writing, he believed they came from her.

"Really," said Huddleston, outraged; "I never heard such an attempt in my life."

At this Mr. Stubbins (not Snubbins), who had the ungrateful

task of representing the defendant, said *sotto voce*, " I've heard worse attempts than that." This not very witty interjection provoked a titter amongst the barristers and solicitors present and drew on the unfortunate Mr. Stubbins the displeasure of a judge already not very favourably impressed by the defendant's case.

Roberts and his witnesses were severely cross-examined by Darling. The witnesses, for the most part, were people who knew nothing of the facts in issue. Of these, Huddleston said, " People are always to be found ready—if only for the pleasure of coming to Assizes, exhibiting a new bonnet or seeing the crowds—to give evidence of some sort."

To many of Darling's questions Roberts contented himself with the cautious reply, " I can't recollect." At last Huddleston grew annoyed. " Don't talk such nonsense here," he said sharply.

" I am sixty years of age and my memory is very bad," replied the defendant.

" So am I ; I am seventy-five," replied the inexorable Judge.

Roberts was able to recollect, however, that he had been convicted of various offences including perjury. He said that after Miss Day's confinement she began to drink. " She came downstairs quite a different woman," he said.

DARLING : That was when you wrote the entry in your diary with the pious postscript, " Grant her a happy delivery for Jesus Christ's sake, Amen ! "

ROBERTS : No harm in that.

DARLING : Your Counsel said just now, " Unfortunately, my client is not in a position to pose as a Pharisee." What do you think of your ability to pose after that ?

What the jury thought appears from their verdict. They found for Darling's client on every issue, giving her £700 for breach of promise, £1,000 for fraud, £700 for assault and £100 for slander, making £2,500 in all. A very satisfactory win for Darling.

The beginning of 1891 found him making one of his comparatively rare appearances at Monmouth, in a case in which he had, as his junior, his old friend and senior in age, A. T. Lawrence. They appeared for the *Abergavenny Chronicle* in an action for libel brought against it by an Abergavenny farmer of the name of Hembrey.

It was an appropriate case for Darling in that it arose out of

his favourite sport of fox-hunting. The Monmouthshire Hounds had met in April, 1890, but the followers had been disappointed of their sport, for the Master made a speech in which he said that he would have to take hounds home as he had heard that Mr. Hembrey and some friends of his from Abergavenny had put down poisoned eggs in the coverts which he rented for shooting and which hounds were to have drawn. Thus " they had only to thank Mr. Hembrey for spoiling their sport." The speech was reported in the *Abergavenny Chronicle* and Hembrey proceeded for libel. The defence justified the statement and pleaded that it was a fair report written without malice on a matter of public interest. It was the sort of case that depends chiefly for its result on the cross-examination of the plaintiff. So successful was Darling in this cross-examination that the Jury stopped the case and found a verdict for the defendants, without hearing any evidence for the defence.

Later on in the same year, Darling led another old Circuit friend and contemporary, Alfred Lyttelton, in a slander case at Worcester. The plaintiffs in this case, for whom Darling and Lyttelton appeared, were Mr. Gaston Wyers and his wife, who brought an action against a dressmaker named Ray in whose establishment Mrs. Wyers had been employed before her marriage. Ray had slandered her by saying she had robbed him by using his materials to do her own work in the time in which she was paid to work for him.

Darling again cross-examined the defendant with effect. Ray said that in his opinion it would be a mean and contemptible action to take money.

DARLING : You don't take a commercial view of life then ?

DEFENDANT : I do take a commercial view, a moral view.

" But they are not synonymous, you know," said Darling amid the laughter of the Court.

The Jury found a verdict of 40s. damages for the plaintiffs, only so much damages having been asked for as would prove that the lady's good character was sustained.

Darling went on from Worcester to Shrewsbury, where he appeared for a builder in an action which he brought for libel against a man named Bennett, who had written to the chairman of the local Board of Guardians, accusing the plaintiff of jerry-building in connection with his contract for the new workhouse at Church

Stretton. Here Darling continued his run of successes by securing a verdict for the builder.

This sequence of winning cases was brought to an end in a criminal case at the Shrewsbury Assizes, where he defended two brothers named Morgan, on the charge of unlawful wounding. They had shot Frederick Allen on the night of the 1892 General Election because, with two other men, he was behaving with what they considered undue boisterousness in the precincts of their house. Darling, however, was unable to persuade the Court that such drastic treatment was an appropriate corrective of such conduct, even on Election night, and the two brothers were convicted and sent to penal servitude.

More interesting was a case at Stafford, early in the following year, which was known as the Tamworth Railway Mystery. In point of fact, however regrettable the circumstances may have been, there was nothing particularly mysterious about them. Darling appeared for John Goodall, a local preacher, who was charged with unlawfully assaulting and causing grievous bodily harm to a Mrs. Siddals. The prosecution was conducted by Underhill, Q.C.

Mrs. Siddals had been travelling respectably and demurely from Birmingham to Barton in a third-class carriage, the other occupants of the carriage being Goodall and one other person. At Tamworth the third passenger got out, leaving Mrs. Siddals at one end of the carriage and Goodall at the other. Mrs. Siddals, unaffected by this proximity, continued her perusal of *Pearson's Weekly*. Goodall moved over to her side as the train left Tamworth and put his arm round her waist, saying, " Let me look over your paper." He reinforced this moderate request by proceeding to pinch her thigh from the knee upwards. Mrs. Siddals very properly resented these approaches, and a struggle followed. She tried to knock on the window of the next compartment with her umbrella, but Goodall came up behind her, seized the umbrella and wrenched her hand from the woodwork of the carriage. The upshot was that she fell from the moving train and only regained consciousness some weeks later.

The defence which Darling was instructed to put forward was that Mrs. Siddals was suffering from hysterical hallucinations at the time of the incident and voluntarily got out of the carriage on to the footboard in a moment of frenzy. Goodall's part was con-

fined to trying to stop the train by pulling the communication cord. Darling did his best with this rather unpromising defence, but the prosecution, who were in possession of Goodall's previous record, set about him in such vigorous style that Darling, in his speech to the Jury, protested against the inflammatory manner in which the prosecution had been conducted and contended that the prisoner had given a clear, succinct, and reasonable account of the eventful railway journey. Hawkins, who was trying the case, did not agree that anybody had given a clear explanation as to why Mrs. Siddals left the carriage, but he instructed the Jury that if she had left it to avoid contact with a man who had attempted indecent assault upon her, and if the leaving of the carriage was not a necessary result of his act, they might not find him guilty of causing grievous bodily harm. They did not, in fact, find him guilty of this, but did find him guilty of indecent assault. There then followed a great deal of legal argument as to the admissibility of evidence in respect of Goodall's character.

" What astonished me," said Hawkins, " and I could not help noticing it, was that you appealed to the Jury to acquit him and restore him to his home and character, which had never been tarnished in any way."

DARLING : I did not say that, my Lord.

HAWKINS : Oh yes, you did, or words to that effect.

DARLING : No, not character.

HAWKINS : Well, then, you carefully avoided it.

DARLING : Your Lordship means that I did not call witnesses to character. I will say frankly that I did not do so because I had had notice from the prosecution that if I did they would call evidence against him.

The upshot was that Hawkins decided not to allow evidence of general bad character, but to allow the evidence of two witnesses then in Court, concerning specific acts. Darling protested against this course on the grounds that it was most unfair to call evidence of acts with which the prisoner might have been—but was not in fact—charged, and which he might have rebutted if he had been so charged. He was, however, over-ruled, and two women gave evidence of assaults upon themselves by Goodall in railway trains. Darling then called his evidence of good character, including a former Mayor of Stafford, who said that he regarded the prisoner

" at this moment as the most pure-minded man I know. He has preached at Stafford and has talked with me about the Church and its services."

" And is it upon that information," asked Hawkins, " that you take him to be the most pure-minded man you ever knew ? "

" Yes, I think so," said the former Mayor and was at a loss to understand the reasons for the laughter.

Hawkins then " spoke at great length and with much solemnity." He said that Darling had acted with great discretion in not calling evidence as to character before the verdict. He had come to the conclusion that Goodall was a filthy-minded person and sentenced him to two years' hard labour to teach him the error of his ways.

Shortly afterwards, Darling appeared at Birmingham for L'Aubinière, the painter, in an action brought by him against a firm of auctioneers and art dealers. The auctioneers had bought pictures supposed to be by L'Aubinière, with his name written on the stretchers. They had catalogued them as being L'Aubinière's work, but he, after inspecting them, informed the auctioneers that he had not painted them. In spite of this, they continued to hold them out as such and sold them for 35s. apiece. L'Aubinière, a former pupil of Corot and a painter of standing who exhibited in the Salon and the Academy, not unnaturally complained that this would damage him in his profession. In opening the case, Darling said, " I understand that unfortunately the works of old Masters have of late been supplied at a rate at which the old Masters themselves could not have supplied them if they had been in existence. I presume the old Masters having been used up, it has been necessary to forge the works of the modern school."

The Judge remarked that people like the defendants deserved a statue from the legal profession. For the difference between 35s. and what they could have got if the pictures had been sold without a name, they were willing to risk an action. He found that there was no reasonable cause to think that the pictures were painted by L'Aubinière and gave judgment for the plaintiff with £50 damages. Darling did not, however, erect a statue to the obliging litigants.

In the remaining years of his practice at the Bar, breach of promise, libel and slander loomed large. He still did some criminal work, but as we have seen, not as much as when he was a junior. Nor were there many heavy commercial cases tried in the towns of



CHARLES DARLING, Q.C.

From the portrait by Charles W. Furse

the Oxford Circuit. But this lighter, rather more knockabout type of work which Darling was doing, was not ill-suited to the exercise of his wit and his combative talent.

In March, 1893, he appeared in a slander action at Shrewsbury against A. T. Lawrence. His client was Annie Brennan, lately head nurse at Atcham Workhouse, who brought an action for slander against Walter Coleman, Master of the Workhouse, on the grounds that he had told the workhouse doctor that she had had immoral relations with the Assistant Master. The accusation had not been made until four months after the alleged misconduct, the Master preferring to wait until Miss Brennan was due for a rise in salary. There was no question that the words had been spoken, and Coleman did not try to suggest that they were true. His defence was that, being uttered to the workhouse doctor, they were spoken on a privileged occasion. Mr. Justice Grantham ruled that the occasion was privileged. But in Law what is known as qualified privilege, such as would exist in this case, is negatived if the words were actuated by malice. It was, therefore, Darling's business to produce evidence of malice. He had a good deal of such evidence, as he was able to show that the defendant strongly disliked the plaintiff because she had rejected the advances which he, himself, had made to her.

In his concluding speech Darling said, "Mr. Lawrence has told us that defendant might have shown a certain want of judgment, while defendant, himself, says that he acted with caution and tact. I suppose the caution consisted in not pleading the truth of what he had said, and the tact in retaining Mr. Lawrence for the defence. This is said to be a model workhouse—the workhouse to which, perhaps, the members of the Oxford Circuit will have to go in their old age—presided over by a man renowned for his caution and tact. Nevertheless, this man did not speak for some months after he heard that the head nurse had committed fornication with his assistant, even though he heard that the assistant had been guilty of similar conduct with every female in the house."

Darling had little difficulty in showing that the Workhouse Master had been actuated by malice, and securing judgment of £100 for his client.

Immediately afterwards, he went on with the Circuit to Stafford, where he was briefed to appear for a Miss Lucy Howlett in her

breach of promise action against John Davies, a rich pottery manufacturer of Hanley, in whose works the plaintiff had been employed. Lucy's case was that she had been secretly engaged to Davies for five years and that he had promised to marry her on his father's death. His father had died and the defendant had so far fulfilled his intentions as to get married, but the fortunate lady was somebody else.

Darling suggested that he had failed to carry out his promise to marry her because of the difference in their social position. "There have, however," he said, "been many instances where such marriages have ended well, especially when the woman was in the inferior social position. There is the instance of Ruth and Boaz, and your Lordship no doubt has in mind the leading case of King Cophetua."

Darling's difficulty was the lack of corroborative evidence, for there were very few letters, as the two had been in the habit of meeting every day. Miss Howlett, however, who was of a religious turn, sent Davies the following literary gem at Easter :

> Many happy returns of the day,
> Many seasons of glory be given ;
> May God in his mercy prepare you on earth
> For a birthday of glory in heaven.

The defendant, not perhaps altogether inexcusably, cursed her and told her never to see him again. But Miss Howlett was made of sterner stuff, and wrote reproaching him and urging him to be a better man. To help him to this end she said she would be a sister to him. "That means that she would tell him all his faults," was Darling's comment. The defendant gave evidence denying that he had promised marriage. Miss Howlett generally happened to be about when he left the factory and he used to walk with her. In the letter he wrote to her he did not begin "Dear Lucy."

DARLING : How did it begin ?

DEFENDANT : Nothing.

DARLING : How did it end ?

DEFENDANT : Nothing.

DARLING : Out of nothing into nothing.

After this, it is not surprising that Mr. Green, Q.C., counsel for the defendant, admitted that "he did not seem particularly

bright." But he suggested that " he gave his evidence in such an artless way as to carry conviction." He did not, however, carry it so far as to reach the Jury, who found for the plaintiff and awarded her £300 damages.

The character of Darling's practice was varied by a case at Oxford in June, 1893, when he had a Treasury brief to prosecute a Chipping Norton butcher who was alleged to have caused the death of a woman called Maria Stanley by selling her unsound beef. There was no dispute that the woman had died as a result of eating the meat and the sole issue was whether the prisoner knew that the meat was unfit for human consumption at the time of selling it. The cow from which the meat came he had killed because of a stoppage, " for fear that it should stop altogether," as Darling said. Darling gave it as his opinion that it was a very shocking thing that such practices should be allowed as one of the common instances of country life. And the Jury seemed to agree with him, for they found the man guilty and he was sentenced to eight months' hard labour.

At Gloucester Darling appeared in another slander action, brought by a solicitor against a money-lender. This action, however, proved abortive, for after hearing the evidence the Judge said, " I am sure that everyone must agree that the defendant was wrong and the plaintiff was wrong." He then asked the plaintiff if he would consent to a juror being withdrawn. The plaintiff at first refused and the Judge directed the Jury to give a verdict. At the contemplation of this, however, the plaintiff announced that he had changed his mind and the juror was accordingly withdrawn.

He was engaged at Gloucester in another breach of promise action, but this time was briefed by the defendant, Francis Cadogan, who was sued by a lady named Kate Ebborn. She had formerly been engaged to a young man named Fry, who went out to Australia. Apparently determined to have a fiancé without very much minding who he was, Kate became engaged to Cadogan. Two years later Fry returned from Australia with a legacy of £2,000. Cadogan's father owned a fishery in the Severn. Torn by these conflicting distractions, Miss Ebborn decided to off with the new love and on with the old. Fry, unlike Barkis, however, was not willing, and she found herself deserted.

Darling devoted his cross-examination to showing that her

conduct to Cadogan had been mercenary and heartless. He argued that it was no case for damages and " proceeded to deal with portions of the evidence and the letters in an exceedingly humorous manner."

" No doubt," he said, " the young lady would by far have preferred that Cadogan had been in Australia whilst Fry was fishing in the Severn . . . her coolness to Cadogan on the evening when she told him he could go, was most marked ; but when a young couple are cool towards each other in company one would not say that they are courting, though you might conclude that they are married."

The Jury agreed with his view of the plaintiff and brought in a verdict for the defendant.

In a later case, at Hereford, Darling appeared for another unfortunate defendant in a breach of promise action. He was Thomas Brewer, a simple, kindly old farmer with silvery hair. The plaintiff, Mrs. Jane Challen, " who appeared to be past middle age," was a designing widow. She made him various things, including nine plum puddings. Stimulated by this novel courting present he proposed to her, according to her story, in the words, " Do be my wife, that's a dear, I'll stick to you and be true to you." Overcome by this romantic proposal she accepted him. His feelings, in the words of her counsel, " overcame him, whether for love of the lady or the reversion, and he flew into her arms, they embraced and kissed, he took her off her feet and waltzed her round the room in the ardour of his happiness."

Darling challenged this version of the story and compared the plum puddings to the famous chops and tomato sauce of *Bardell* v. *Pickwick*. There had been no promise to marry and the defendant was merely " a designing widow who wanted to get hold of a respectable old farmer and his snug little place." She was, however, not as fortunate as Mrs. Bardell ; and perhaps Mr. Pickwick would have fared better if he had had Darling to represent him instead of Serjeant Snubbin, for, in this case, it is gratifying to record the Jury without hesitation found a verdict for the defendant.

In one of the cases towards the end of his career as a barrister, Darling found himself crossing swords with the great Sir Edward Clarke, who led a team of two Q.C.'s with Mr. Charles Gill as junior, while Darling led Mr. Eldon Bankes, later to become Lord Justice Bankes. Darling's client was the Dowager Countess Cowley,

who was being sued for slander by a Mrs. Lily Jacoby, who lived near the Duke of Beaufort's house at Badminton and, like Darling, hunted with the Beaufort. Mrs. Jacoby's case, as presented by Sir Edward, was that she had been on good terms with all the best people in the county until Lady Cowley accused her of writing certain scurrilous anonymous letters that were going round the neighbourhood. After this, everybody cut the Jacobys. Sir Edward called three gentlemen to say that Lady Cowley had spoken to them in the hunting field about the letters. Under Darling's cross-examination, however, the first gentleman admitted that he had heard many people talking about the letters and that it might have been one of them who had suggested their authorship to him ; the second agreed that Lady Cowley had referred to letters " supposed to have been written by Mrs. Jacoby " ; while the third had no very clear recollection at all, but thought that it had been Lady Cowley who said, " If Mrs. Jacoby has written these letters some notice ought to be taken of it."

This rather flimsy case was not improved by the evidence of the plaintiff herself, who made a very bad witness. She was very excitable and had frequently to be reproved by the Judge. After his cross-examination of her Darling submitted there was no case to go to the Jury. Mr. Justice Hawkins, however, was very anxious that the parties should compose their differences out of court, saying that it would be a lamentable pity to allow it to go on since, if the object had been to clear Mrs. Jacoby's name, that had been accomplished so far as writing the letters was concerned. Darling pointed out that it had never been suggested by the defence that she had written them. Sir Edward then agreed to try and persuade his somewhat intractable client. Finally, a settlement was reached, and a juror withdrawn.

So Darling's contest with the great Sir Edward, who had for some years been a friend of his at the Bar and in the House of Commons, and with whom his friendship was to continue for many days, ended in a draw.

Also in the nature of a draw was another encounter with Sir Edward Clarke at about this time, in what was known as the Diamonds Case. This came to him from Messrs. Kebbell & Miller, a London firm of solicitors who had given Darling a good deal of work from time to time. Mr. Kebbell was himself a witty man, to

whom Darling's personality and method of conducting his cases made a considerable appeal. Kebbell & Miller had, for a client, one of those young men who used to be more frequently found in those halcyon days of lavish expenditure that came at the end of over half a century of unbroken prosperity. This young man, whose name was Tasker, had come into a fortune of £700,000. This he set about spending with commendable vigour. In May, 1894, he visited Streeters, the jewellers, to see a model of the Holy City in jewels. There he was introduced to a Mr. Rogers, who was so taken with his company that he became his constant and devoted companion for the next few weeks. At the end of that period he had sold Tasker the "Stafford Collection" for £10,000; the Agra Diamond taken by Baber, the Mussulman chief, at the battle of Agra in the fifteenth century, for £15,000; seven large brilliants for £30,000; and the Hope Diamond, if it could be got from the Court of Chancery in whose possession it then was.

The action in which Darling was briefed by Messrs. Kebbell & Miller, was a claim by him to recover the money paid for the jewels and to set aside the purchases on the grounds that there had been false representation as to their value. The case was tried before Baron Pollock; Darling, Finlay, Q.C., and R. M. Bray appeared for Tasker, and Sir Edward Clarke and Eldon Bankes for Streeters. The case attracted much attention because of the unusual circumstances and because the court glittered with the exhibits. Darling spoke eloquently on behalf of his unfortunate and unwise young client and was partially successful in obtaining rescission of the contract; but on items to the value of over £20,000 judgment was given for the defendants, thereby providing for the plaintiff yet another illustration of the old adage.

This and the Lady Cowley Case were amongst the last cases in which Darling was to appear as counsel.

CHAPTER IX

A MUCH CRITICISED APPOINTMENT

IN the autumn of 1896 Darling was appointed Commissioner of Assize on his own circuit. He did not have to discharge the entire judicial business, for the Lord Chief Justice was present at Reading and at Oxford. In this way he had his first experience of trying cases, and it was admitted—by some perhaps with a little surprise—that he tried them very well.

The appointment of a Commissioner of Assize is not, however, a matter that attracts much popular interest, and in the ordinary way it would have gone unnoticed except by those practising on the Circuits who were personally interested in the matter. The Liberal Party, however, chose to draw unwelcome attention to the matter by making it a political issue. The point was that no Member of Parliament may hold an office of profit under the Crown. Normally the position of Special Commissioner, like the office of Judge, for which it is a temporary substitute, is remunerated. In this instance, however, Darling especially stipulated that he should not receive any fee for his services, in view of the fact that he was a Member of Parliament. The *Daily News*, commenting on this, said, "the Chancellor of the Exchequer refused to give him any pay." This, Darling said in the short personal explanation he made in the House of Commons, was "as untrue as it was offensive." No application had been made to the Exchequer, for the good and sufficient reason that he had expressly stipulated in writing that he should not be offered any kind of reward or fee whatsoever. The Attorney-General defended Darling's appointment, and stressed the fact that he had acted, not as Special Commissioner, but as Commissioner; and that, as all Queen's Counsel on the circuit were included in that Commission, he sat by virtue of that fact.

The point created a mild political squabble that was soon lost

sight of. It was not realized that there was any likelihood of its being the precursor to a more splendid appointment. Many people fulfil, at some time or another, the duties of Commissioner of Assize without thereby gaining promotion to the judicial bench. Nor was it generally thought that Darling was of judicial timbre. Parliamentarians thought of him as a witty and vigorous political controversialist; the Temple considered him a political Silk who did a little work on Circuit. This was not, however, the view of Lord Halsbury, the Conservative Lord Chancellor. He was a personal friend and had opportunities for detecting the underlying qualities in the man—opportunities denied to the more superficial observation of Darling's competitors at the Bar and in the House of Commons. Halsbury had seen the way he had carried out his judicial duties as Commissioner of Assize; what he saw there confirmed him in the opinion he had formed of Darling's judicial potentialities. In the autumn of 1897, when vacancies occurred in the Judiciary, he decided to appoint Darling to the Bench. It was a bold appointment judged by any standard; but Lord Halsbury was a bold man, a refreshing quality in a lawyer and one more useful than some of the more typical characteristics of the legal profession.

In October, 1897, rumours of the intended appointment spread from the Temple and the House of Commons to the outer world. They were received first with incredulity, and then with dismay. On October 26 *The Times* took sufficient notice of the rumours to devote a leading article to them. With its accustomed gravity it gave warning that "there are too many weak elements in the Common Law Bench as it stands to afford room for any further experiment in the direction of appointments made on political rather than professional grounds," and went on to say that the Government would be unwisely challenging public opinion by making an appointment which would be disapproved by the Bar. As for the subject of the rumour, the article admitted that he was a man of "acute intellect and considerable literary power," but he had given "no sign of legal eminence." "To speak of him as an eminent lawyer, or even a distinguished advocate would be absurd. If he is raised to the Bench, it will be on political grounds." Such was the opinion of *The Times* on the advisability of appointing Darling to the Bench. Two days later the appointment was announced.

It did not take long for the storm to burst. In the Press, in the Temple, and in the Clubs, the new appointment was unsparingly criticised. The wildest reports gained currency. A petition was to be hawked around the Temple; a demonstration was to be organized to protest against the appointment; barristers were to refuse to conduct cases before him; judges were to refuse to recognize him. There was, of course, no truth in these rumoured activities. Even the Radical Press had regretfully to admit the impracticability of such action, for, after commenting on the possibility of a demonstration by the Bar, the *Westminster Gazette* felt itself obliged to add " though in what way a demonstration could be arranged, beyond a refusal of the customary Circuit congratulation, it is difficult to perceive."

But if action was ruled out there were always words: there always are. *The Times* preached a cautious sermon in its leading article, in which it admitted that the Lord Chancellor had more than once been proved right in selecting little-known barristers. It went on to say, however: " these instances scarcely excuse some recent appointments. Mr. Justice Darling has a pretty wit, and his sense of irony will enable him to appreciate the irony of fate which places him where others might have expected to be. He has had some experience as a criminal lawyer. It is admitted that as a Commissioner of Assize he did his work well. But probably he would be the first to admit that others who are now County Court Judges have done as much or better."

While *The Times* deprecated, the Radicals stormed and raved. Mr. Asquith, in accents anything but grave and calm, said that in the case of Deptford the electors should feel themselves under a special responsibility " to give expression to a practically unanimous judgment of the whole community without distinction of creed or party, upon the most startling exercise of the right of public patronage ever recorded." But Mr. Asquith was out-done, as he generally was in violence of invective, by others of his party. The *Daily Chronicle* wrote: " Mr. Darling has only two conceivable qualifications for a judgeship—that he is an extreme partisan of the Government now in office, and that his seat is supposed to be safe. He is clever with a certain shallow cleverness. On any subject to which he has publicly addressed himself, he has shown himself incapable of a broad judicial view. He has no serious knowledge of the Law, and has

never handled any important practice at the Bar. The whole transaction is grossly scandalous." The next day, after referring to the appointment as " the grossest scandal of recent times," the *Daily Chronicle* suggested that Darling should be advised by his friends to take his Knighthood and retire. " Perhaps the Lord Chancellor could console his favourite with a baronetcy, or even a seat in the House of Lords ?" The *Westminster Gazette* did not allow itself to be left behind in the ardour of its vilification. " It would be hard," it said, " to imagine a more indefensible appointment ; and it is certain that it will be viewed with dismay by Bench, Bar, and public." Lord Halsbury, having apparently exhausted the list of his relatives, " was now ready and willing to be a party as well as a family man." " No one," it proclaimed triumphantly, " seems to have a single word to say in favour of the appointment, and there is even talk among the less orderly spirits of something like an organized demonstration of disapproval when the new judge is sworn in." It suggested that Darling was practically unknown in the Courts, and would do well to bring evidence of identification with him when he took his seat, in case the attendants should not let him in. The only thing the *Westminster Gazette* found to say in favour of the appointment was that " so far as is known at present the new judge is not related to Lord Halsbury."

These and other equally fierce attacks were the assaults of political opponents between whom and Darling hard knocks had been accustomed to be exchanged for the preceding decade. The Law papers were much more moderate and fair ; thus the *Law Journal* said : " Although there are other members of the Bar with better claims, yet it should not be said that he has no claims at all. . . He will prove a far better judge than some of his critics believe. The fear we entertain is. . . that it (the appointment) may encourage the belief that the pathway to the Bench lies simply through a series of hard political fights."

And what of Darling himself during the storm ? He had not, as we have seen, started his career at the Bar with any idea of judicial ambition. Nor on obvious and visible qualifications could he, in 1897, consider himself other than lucky to secure the appointment. When it was offered to him it meant, of course, leaving the House of Commons which he liked. But he had no doubt as to the propriety and advisability of accepting the appointment, for neither

his worst enemy nor his best friend could say that he lacked confidence in his own abilities. And in this case the instinct of the man was fortified by his successful experience as a Commissioner of Assize the previous year. That being so, he was calm in his own mind. A man who had lived a cloistered life in the Law could not but have been shaken almost to distraction by the violence of the storm that beat about him. But Darling had led no such existence. The present generation, who knew him only in the heyday of his reputation as an established wit and veteran Judge, may not appreciate the toughness that was his. But those who have read thus far and have seen a young and vigorous Darling exposed to the turmoil of the extremely democratic electorate of Hackney and Deptford ; and have observed his gladiatorial contests with Sir William Harcourt, most redoubtable of the Liberal champions, and with the brilliant Irish Parliamentary skirmishers, will realize that he was hardened to abuse and recrimination. This experience stood him in good stead now. It enabled him to sit quietly while the attacks were hurled at him, and merely to wait.

There was, in fact, nothing to do but wait. For an attack such as this could be rebutted satisfactorily only by the experience of time. Darling, himself, was naturally unable to compromise the dignity of his position by either answering or commenting upon the criticisms levelled at him. Others might have done so and indeed did to some extent ; Arthur Young, for instance, of the Oxford Circuit wrote to the Press praising Darling's work as Commissioner of Assize. But it was difficult for ordinary members of the Bar to write and praise the appointment of a new Judge. The etiquette of the procedure would be doubtful, as it is obviously not in accordance with principle that barristers should praise the appointment of Judges before whom they may have to appear in Court. Besides, there was little that could be said. It was true that there were barristers with larger and more lucrative practices than Darling ; it was true that he had been a strong Tory partisan, and a friend of Lord Halsbury ; in the more responsible papers the competence of his work as Commissioner of Assize was already acknowledged. The reasons for his appointment had to be sought elsewhere, in Lord Halsbury's discernment of the judicial qualities of Darling : the proof of them had to be a matter of time, and came to be a record of history.

Though criticism was levelled impartially at Darling and at Lord Halsbury, the logical target was after all Lord Halsbury, the man who made the appointment, rather than the man who accepted the position. Lord Halsbury, however, like Darling, was not the man to be shaken from his purpose by the gusts of Press criticism or popular clamour. He was " a Chancellor who never doubted ; " he had faith in Darling, and was prepared to back his judgment. In connection with the friendship between these two men, alike in their literary learning, their independence of judgment and their Tory opinions, it is interesting to see what Darling said of Lord Halsbury when he died. The appreciation of Lord Halsbury which appeared in *The Times* of December 12, 1921, by " One who knew him well " was, in fact, written by Lord Darling. In it he said : " Though far younger and far beneath him, I knew him well ; and it is with regard and with reverence for his many great qualities that I write these few and inadequate lines. When first I heard of him, Hardinge Giffard, Q.C. was the leading Counsel on the South Wales circuit. He had the reputation of being idle, and of spending little time in the reading of his briefs, for he was *facile princeps* there, and only in the Courts at Westminster was there to be found any opponent altogether worthy of his steel. In this he resembled Henry Matthews of the Oxford circuit. And in another point they touched. Each of them was learned in the Law and steeped in literature, having nothing in common with such learning as most lawyers find sufficient. A Latin author or a Greek, provided for Giffard all the relaxation which others may nowadays find in golf, though even this he did not entirely neglect.

" In later years I knew Lord Halsbury well, and I was proud then, as I am now, that he called me one of his friends. And so I learned to love him for his sturdy common sense, which all his learning never could obscure. And to love him too for his ever-present sense of justice and of right, in small things as in great, for his simple domestic life, untouched by any vanity in the great office he so long held, and for the honest indignation he ever felt at a deviation, by those who should walk in the ancient ways, from the well-marked path of men of honour."

On the occasion of the publication of this in *The Times* the present Lord Halsbury, then Lord Tiverton, wrote to Lord Darling :

4, Ormonde Gate, S.W.
13.12.21.

Dear Judge,

Mother and all of us want to thank you most deeply for your sympathy, and for the very human way in which you wrote about him in *The Times*. It struck a note that none but an old friend could.

I am sure you will forgive my not writing more, but my heart is very full just now.

Yours sincerely,
TIVERTON.

It is gratifying to think that the first Lord Halsbury lived to have abundant proof of the wisdom of his choice and a justification of his instincts. In fact, his long life ended only just before Darling's career of over a quarter of a century's service on the Bench. In 1917, when Mr. Justice Darling was appointed a Privy Councillor, Lord Halsbury wrote to him :

4, Ennismore Gardens,
S.W.7.
November 28th, 1917.

My dear Judge,

I congratulate you upon the recognition most just and true of a judge who owes to his own learning and acuteness the position which he has achieved by both these qualities and by another—which is that he has never shirked work or responsibility. I hope you may long continue as an example of what an English Judge ought to be.

Believe me, with hearty good wishes, your friend and admirer.
HALSBURY.

This, however, lay in the future. On November 1, 1897, Darling had to take the oath in the Law Courts. Huge crowds assembled to witness the proceedings and many had to be turned away. As Mr. Justice Darling took the oath it was observed that his manner was assured and entirely without nervousness. His replies were made in a firm, clear tone of voice and he looked at the spectators with the appearance of assured insolence which was the impression given by his cast of features. Even the hostile Press could

find no derogatory comment ; and they were forced reluctantly to admit that the inaugural ceremony was attended by no demonstration, " not even a groan from the Junior Bar."

He then proceeded to Court 5 to hear his first cases, where he found another densely-packed crowd waiting to hear how he would shape in his judicial task. Again his manner impressed. He did not talk much ; but when he did intervene, the intervention was to the point. He was alert and listened patiently and carefully to the evidence given. And then a witness went into the Box and complained that the other side had been opening all his letters. " I wish," said Mr. Justice Darling, " that someone would be good enough to open all of mine." It was not that a remark had any pretensions to wit ; but there was something in the manner of saying it and the slight twitch of the face which accompanied it that made the spectators laugh in appreciative expectation of better things to come. At seven minutes past twelve on that grey November morning England's greatest judicial wit was launched upon his course.

But to be a wit was not enough. He was a Judge. And as the litigants came into the Court of the Judge whose appointment had provoked such an unparalleled outcry they had something in common with him. For it was not only they who were on trial.

CHAPTER X

TASTES AND RECREATIONS

ON his marriage, Darling for the first time acquired a home of his own, at 36 Grosvenor Road, Westminster. Here he and his wife lived with their two older children, Lucia and John Clive, until about the time he was appointed Judge. They then moved from Grosvenor Road to 18 Prince's Gardens, which was their home for over twenty years. After that he went to Albert Hall Mansions, his place being taken at 18 Prince's Gardens by another member of the legal profession, Mr. Arthur Moon, K.C. Many people view their London residences as isolated and personal spots, and give little thought to the surrounding amenities. With Darling this was never the case, and his interest is illustrated by two letters he wrote to the Vestry of St. Margaret and St. John, Westminster, one from Grosvenor Road in 1889 and one from Prince's Gardens in 1900:

36, Grosvenor Road,
Westminster,
9 Nov. 1889.

Dear Sir,

Your letter some time ago told me that arrangements had been made for replacing those trees in the road which have died. No steps, have, however, yet been taken in regard to them—and I fear that if the new trees are not planted before the frost sets in they will have a poor chance of living.

Will you let me know if the work will soon be undertaken.

Yours faithfully,
CHARLES DARLING.

18, Prince's Gardens,
S.W.

Mr. Justice Darling would be glad to be informed whether it is not the Vestry's duty by Act of Parliament to cleanse the

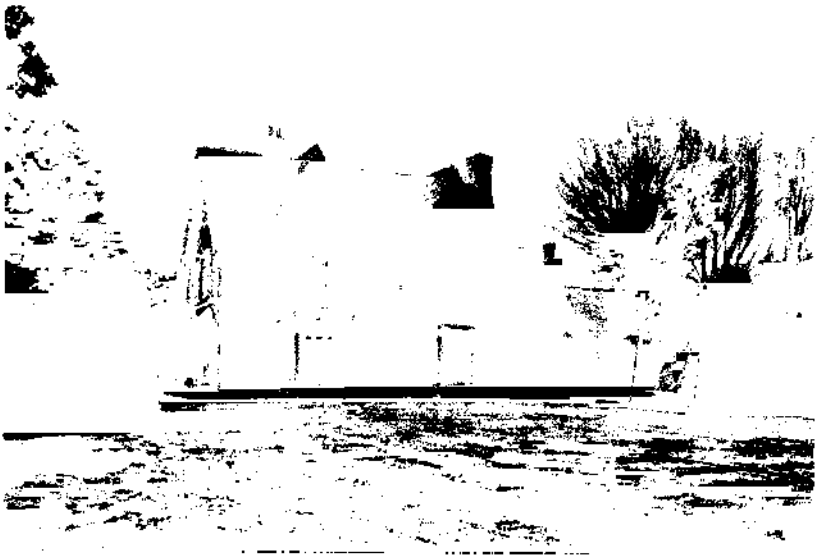
pavements in this immediate neighbourhood of snow. At the same time he would direct their attention to the fact that nothing whatever has been done of this kind on all the road leading from Prince's Gate down to Ennismore Gardens—nor from these along past this house.

A distinct answer to this enquiry is desired, and an intimation that the Vestry's Surveyor will look into the matter will not be considered satisfactory—for the neglect of the roads, in all weathers, in this district is continuous.

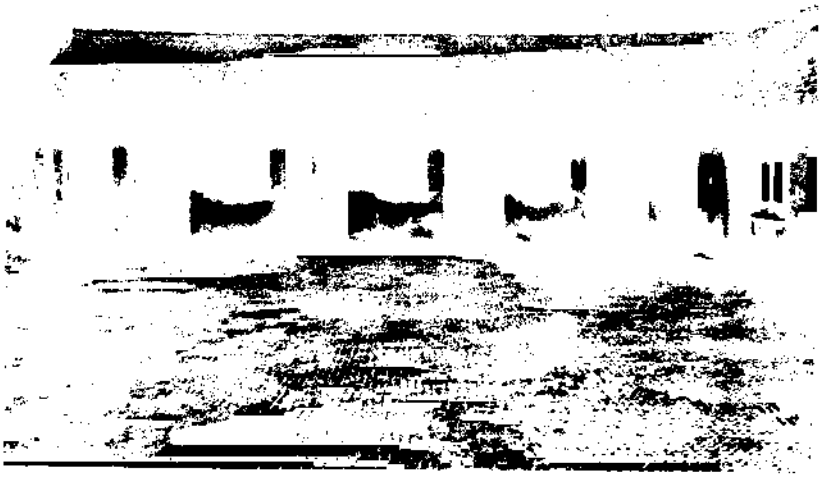
12 February 1900.

At about the same time as he moved from Grosvenor Road to Prince's Gardens, Darling made another residential change of greater importance in his eyes : he acquired a country property by taking over Lady Cross Lodge, which belonged to his mother-in-law. Lady Cross Lodge is near Brockenhurst, in the New Forest country. It was originally one of the Crown Keeper's cottages, and had been enlarged at various times, but it still remains Crown property. Here Darling made his country home, and here he spent most of his vacations from the Bench. He became a keen lover of the New Forest and the neighbouring country, and his family are intimately associated with it, as his son married Miss Joan Powell whose home was at Lyndhurst and his daughter Lucia married Mr. Keppel Pulteney of St. Austin's, Lymington.

Residence in the New Forest gave him added opportunities for indulging in his favourite sport of hunting. He had, as we have seen, learned to ride as a boy, and his love of horses was enduring. He hunted as regularly as his political and legal occupations would permit. Even before he took over Lady Cross Lodge he had associations with the New Forest, through his wife's people ; moreover, his brother Tell had settled there and devoted the winter to hunting. Both Darling and his brother, who had a house in the Beaufort country, hunted with the Beaufort in the '80s and '90s and Darling received from the then Duke of Beaufort, grandfather of the present Duke, the right to wear the Beaufort coat ; this was before the Beaufort became a subscription pack. He kept the letter which the Duke wrote to his brother :



The house



The stables

LADY CROSS LODGE, BROCKENHURST

Badminton,
20th December, 1889.

Dear Mr. Darling,

First of all forgive my not knowing your Christian name—your brother I know is Charles and my Directory of Wilts is of too ancient a date to enlighten me. It has come to my knowledge through one of my cousins that you would like to wear the Blue Coat when hunting with my hounds. I shall be very pleased to see you wearing it. I am sure the brother of so good and sympathetic a politician as the learned Q.C. is, will be an addition to our Hunt. Our acquaintance is very slight but I hope it will improve—and as I know you are popular with your neighbours I am quite sure that it will. I hope to see your brother down here during the Christmas vacation and trust that the frost will not interfere with his short holiday and that I may see you both in the Blue Coat.

I might perhaps see you to-morrow and have spoken instead of writing but it might freeze or if I saw you I might not get the chance of speaking to you. I am,

Yours faithfully,

BEAUFORT.

Darling also hunted fairly regularly in the New Forest, and quite frequently got a Saturday hunt with various packs when he went on Circuit as Judge.

He did a good deal of hacking, too, both in the summer and in occasional hours snatched from work. He told me that as a young man he used frequently to ride down to Richmond from London, which was quite a general custom in those days. At that time it was not altogether unusual for equestrian members of the legal profession to ride to the Temple for the work of the day. One veteran, who always used to arrive on his grey, was the learned author of " Byles on Bills," for which reason, as Lord Darling told me, the horse was invariably referred to as Bills. Later on, however, this practice was generally abandoned for the early morning canter in the Row to prepare the liver for the exacting duties of the day, and Darling was one who rode pretty consistently in the Row. The Bar was rather more equestrian in those days than it is now, and there were always plenty of legal lights and aspirants taking their morning exercise. Amongst those with whom Darling would ride in the

Row were Frank Lockwood ; J. G. Butcher, K.C., M.P. for York ; Mr. Justice Grantham and his son ; Alfred Lyttelton ; A. T. Lawrence ; and so on.

It was on some such occasion as this that Mr. Justice Grantham, or his son, W. W. Grantham, suggested to the others the possibility of holding a point-to-point for members of the Bench and Bar. It was fixed to take place on April 10, 1895, at the late hour of 4 p.m., the reason for this presumably being that in those days the Courts sat on Saturday mornings. The race was held at Hoppingwood Farm, near Wimbledon, and Darling entered his grey mare, Brumaire. The race was attended by large numbers of the legal world and others, but Darling himself was not fortunate, as Brumaire refused early in the race. He succeeded, however, in getting her over, and ultimately finished the course.

The meeting was so successful that it gave him the idea of forming a club in order to make the point-to-point an annual event. In the Easter vacation which immediately followed the meeting at Hoppingwood Farm, he embodied this idea in a letter to W. W. Grantham :

Forest House,
14th April, 1895 Lyndhurst Road,
Nr. Southampton.

My dear Grantham,

Our meeting of Wednesday last was, it seems to me, so successful that we ought to take means, while the recollections of it are still fresh, to make these competitions annual. And it has occurred to me that the best way to do this and to keep the management in the right hands would be to found a club (The Bar Point-to-Point, The Pegasus Club, or something of that kind). No subscription would be necessary but we might dine together once a year. I would suggest that all those, Judges or Counsel, whose names were on the race card on Wednesday should be the original members. I think election should be by ballot, two blackballs to exclude. If the thing started like this we could get a meeting next year, and keep the thing really an affair in which working barristers could take part, as against letting it get into the hands of the nominal barristers but professional jockeys. We might easily make the club one that men would be rather keen to

belong to, I think. Will you ask your father what his views may be as to this suggestion? And if he approves we might put the thing in train when we all get back to town again.

Yours sincerely,

CHARLES DARLING.

The suggestion found instant favour, and a circular was sent out setting forth the suggestion contained in the letter, and signed by Darling himself and his friends Lockwood, A. T. Lawrence and Alfred Lyttelton. As a result, the following autumn a meeting was held of those interested, with the Lord Chief Justice in the chair. On the proposition of Lyttelton, seconded by Darling, it was resolved to form a Bar Point-to-Point Club and to appoint a Committee of eleven to draw up the rules. Darling was one of the eleven and also on the sub-committee of four, which the Committee, in the manner of committees, promptly appointed to do its work for it. Much work was in fact involved, but as last the drafting was complete and was adopted by a general meeting of the club. One further thing the Pegasus owed to Darling and that was its name. Strange as it may seem after forty years, but for him the club might be known as "The Bar Point-to-Point Steeplechase Club." It was Darling's suggestion that it should take its name from Pegasus, the winged horse which is the emblem of his own Inn, the Inner Temple; the crest of the Club could not be the same as that of the Inner Temple, and so Lockwood gave to the winged horse a forensic rider clad in wig and gown.

Darling's connection with the Pegasus* was active and intimate. He took the chair at the first meeting of the Club in December, 1895, and again in January, 1896. In the second Annual Point-to-Point, held this time at Potter's Bar, on a very cold day in March, he again rode Brumaire, this time finishing fourth. By 1898 he had another mare, Wild Rose, which he entered for the Pegasus meeting. There was great excitement, for by this time, Darling was a Judge, and the disappointment was proportionate when at the last moment he was prevented from competing. As a matter of fact, the treat of seeing a Judge ride his horse in the Pegasus point-to-point was postponed until after the War. Darling did not ride in the Pegasus again, and the first Judge to do what he had

* The full history of the Pegasus Club can be read in Colonel Hawkes's *Bench and Bar in the Saddle*.

intended to do in 1898 was Mr. Justice Roche (later Lord Roche), who competed in 1922. In 1897 Darling, the child of whose imagination the Pegasus had originally been, added another branch to its activities by suggesting an annual dinner. Needless to say, the suggestion found instant favour with the members of the Club, and Darling was one of those entrusted to supervise the arrangements for the holding of the first dinner. Throughout his life he was a regular attendant and a frequent speaker at the dinners of the Pegasus, of which he became President in 1904.

In 1897 Pegasus and Darling alike received a great blow by the death of Frank Lockwood. Darling, though a man of an extremely extensive and varied acquaintance, was not one who ever had many intimate friends. From shortly after his call to the Bar until Lockwood's death, Frank Lockwood was one of the most intimate. From 1887 they were in the House of Commons together, and though on opposite sides this did nothing to limit their friendship, though in those days party differences inhibited personal friendships more than is the custom today. Lockwood was, like Darling himself, a man of great wit, though his was of rather a more boisterous and compelling quality than the exquisite epigrams of his friend. Lockwood had, however, the gift of wit in his pencil as well as in his tongue, and he and Darling made a most felicitous combination when he illustrated Darling's books. Some of the caricatures sent or given him by Lockwood at odd times in the '80s or '90s, Darling kept in his possession until the time of his death.

Lockwood, who was only fifty-two when he died, had been Solicitor General in the Liberal Government. Another eminent lawyer-politician with whom Darling was intimate was Carson. Carson was not on the Oxford Circuit, and Darling's friendship with him started at rather a later date. Carson had his beginnings in the rather different conditions of the Irish Bar, where he had been a great figure. In 1892 he came over to England as a Member of Parliament, and decided to practise at the English Bar, it being impossible to combine practice at the Irish Bar with attendance at Westminster. He did not understand the Chambers System, which is the basis of the structure of professional practice in the English Bar, as described in an earlier chapter, for it does not obtain—or at any rate it did not then obtain—in Ireland. He was despondent about his chances at the English Bar, but Darling thought differently, for

he instantly appreciated Carson's great qualities and had an unbounded admiration for him. As he said, " he was so very relevant, so unlike all the other Irishmen we had seen : he simply could not talk balderdash." Throughout his life, Darling loved lucidity and relevance above all things, and hated the sloppy thinking which he characterised as " balderdash "—or, more frequently and monosyllabically, as " bosh."

Darling met Carson for the first time in the Carlton Club, in the summer of 1892, shortly after the latter had been returned as Member for Dublin University in the General Election of that year : but he had already heard his praises sung by Balfour in connection with work done in Ireland. Darling invited Carson to join him in his Chambers in Dr. Johnson's Buildings. Carson demurred, and doubted whether he would get any practice in London. But Darling encouraged him. " In a year," he said, " you will have five times my practice." Carson laughed sceptically, and offered to bet a shilling that it would not be so. Darling then went away and had Carson's name painted up on his Chambers.* At the end of the year Carson had won the bet, and presented Darling with a hawthorn walking-stick, with a silver band bearing the inscription : " C.D. from E.C. 1894." This stick Darling proudly kept in his possession until his death, and was fond of telling the story of how he acquired it. Carson did not long remain a junior at the English Bar, and became an English Q.C. in the summer of 1894. In writing to Mrs. Darling to thank her for her congratulations on this occasion he said : " I feel somewhat like what I should think a man getting married for the second time feels—as if I was quite accustomed to the ceremony."

Darling was very much in accord with Carson's political principles, though of course very soon he was precluded by judicial office from taking any part in the political controversies of the day. His private politics, however, continued to be very much a devotion to those things of which Carson was soon to become, and long to remain, the chief national exemplar. Their friendship, which had

* The late Mr. Marjoribanks, in referring to this incident in his *Life of Lord Carson*, made a curious mistake. He wrote : " Darling gave orders that the name 'E. H. Carson,' without the initials Q.C. were to be painted . . . ", giving as a reason for this the fact that Carson, though an Irish Q.C., would rank as a Junior at the English Bar. Darling, of course, gave no such directions. It would not have been necessary to do so, as English Silks do not have Q.C. (or K.C.) painted on the doors of their Chambers.

started so happily with a shilling bet, extended over the period of Carson's lifetime. He died only two years before Darling himself.

Most of Darling's political friends were Tories, for he had formed associations with them in the House of Commons and continued his membership of the Carlton Club. The Tory qualities and the Tory mind were also, of course, more attuned to his own way of thinking. He was friendly with many of the brilliant Conservatives of the Balfourian generation, George Wyndham as well as Carson and Alfred Lyttelton. George Wyndham was like Alfred Lyttelton in that the gods gave him all the qualities that pointed to success and then withheld the success itself. Darling wrote to him in 1900, when he was given the Irish secretaryship. Wyndham replied as follows :

Vice Regal Lodge, Dublin.
13th Nov. 1900.

My dear Darling,

Many, many thanks for your kind letter. You have gauged the personal aspect of the situation. It is double or quits with the maximum left down. When " the leaves come again " as Brodrick would say and we are cantering together in the Park, I shall be better able to guess whether the toss will prove propitious. Meanwhile I find plenty to do, and the prospect of an interesting period.

Yours very sincerely,

GEORGE WYNDHAM.

Wyndham had his interesting period all right ; but the next few years gave him his answer : the toss was unpropitious.

Parliament was also responsible for a long friendship with Sir Herbert Maxwell, with whom, in later years, he frequently stayed in Scotland.

Darling did not confine his political friendship to the Conservative Party entirely, however ; a brilliant Liberal of a later vintage than Lockwood, was Mr. Winston Churchill. Mr. Churchill was not in Parliament when Darling was, but Darling came to know him early in the century. He wrote to congratulate him on obtaining office in the Liberal Government of 1905, and received back a characteristic letter :

105, Mount Street, W.
14 Dec., 1905.

My dear Sir Charles Darling,

Many thanks for your kind letter. I am not under any illusion about my position or prospects. But I hope to pick my way as heretofore without absolute disaster.

It is rather fun being in office at first!

Yours very sincerely,
WINSTON S. CHURCHILL.

They were drawn together amongst other things by a love of painting, and both of them were amateur performers of more than conventional merit. In illustration of this, there is a letter sent by Mr. Churchill to Darling thanking him for the gift of a picture some fifteen years later.

10, Downing Street,
Whitehall, S.W.1.
1 Dec., 1920.

My dear Darling,

I am touched by your kindness in sending me this charming picture which I admired so much. I know that feelings of long and warm friendship find expression in this gift. I shall always keep it and value it on this account apart altogether from its artistic beauty by which I was so much struck.

When will you come to lunch and see my sketches?

Will you kindly telephone to Eddie Marsh and let me know when you are free.

With warm thanks,
Believe me,
Yours very sincerely,
WINSTON S. CHURCHILL.

Then, of course, there was F. E. Smith, though he really belonged to a slightly later period. He possessed many of those qualities which Darling admired so much in Carson, and there was nobody Darling liked to have appear before him more than the future Lord Birkenhead. On one occasion F. E. Smith was told by a friend that Darling had said that he would rather hear F. E. open a complicated case than any Counsel at the Bar. Lord

Birkenhead then continued the story in characteristic language: "Gratified perhaps rather than surprised by the tribute I asked: 'Did the Judge say why?' 'Yes,' replied my friend, 'he said that it was interesting to discover which of two fresh minds would grasp the facts first.' It will be observed that the learned Judge did not reject even the extravagant from his ambit of humour."

But just as Darling's interests were by no means confined to the Law and Politics, so his acquaintance embraced people far outside these realms of life. He always liked soldiers, for instance, of whom he knew a fair number; several of his wife's family were in the Army, and his son became a soldier. He knew, perhaps, fewer authors than would have been expected from a man of his literary tastes. On the whole he preferred the company of painters, and liked the occupation, intolerable to some men, of sitting for his portrait. He had his portrait painted several times, notably by Furse and by Grenville Eves, whose painting of him hangs in the Arts Club. His best friend amongst painters, however, was probably Sir John Lavery, with whom he was roughly contemporary and with whom he enjoyed a very long friendship. Through Lavery he met Rodin, whose genius he greatly admired and to whom he later wrote the sonnet starting:

> Rodin; who didst divine in clay concealed,
> The prison'd spirits;

There are also one or two notes from Rodin amongst Darling's papers accepting invitations and so on. Another eminent Frenchman with whom he was friendly was Coquelin, the famous actor of the Comédie Française. Whenever Coquelin was acting in London, Darling and his wife went to see the performance, and the actor would come to Prince's Gardens. Thus on July 1, 1895:

Dimanche.

J'éspère, Dear Sir Charles, que demain soir, j'aurai le plaisir de vous voir dans ma loge pendant un entr'acte de Cyrano, nous considerons de ce que je pourrai faire, et tout ce que je pourrai faire avec vous, me sera très agréable.

Je désire beaucoup voir votre petite fille, et je vous envoie en attendant demain, tous les meilleurs sentiments de votre ami.

COQUELIN.

Darling inscribed a poem to Coquelin, starting :

> Student of man—yet closer of Molière—
> How various is thy instinct and thine art

which appeared in the *Westminster Gazette* of July 4, 1908, under the initials " C. J. D." Another Frenchman whom he knew and to whom he inscribed a poem was celebrated in yet another walk of life, General Picquard, French Minister for War. Nor did his friendship with France fail to embrace representatives of his own profession, for he entertained Maître Labori, the foremost French advocate of his day, when he was in London.

Darling was fond of society, as was natural to one of his great conversational quality, and naturally he attended a variety of parties and functions. His papers contain numerous invitation cards, some of them dating back to the days when he attended political receptions, while others refer to functions at the Inner Temple, where he became a Master of the Bench in 1892 ; others are connected with State occasions such as the Jubilee, the Diamond Jubilee, and so on. He was fond of the ordinary mixed dinner-party, but liked, too, that kind of dinner where interesting men from various walks of life gather round the same table to dine and share their views. He was, for instance, a regular attendant at the Cornhill Dinners, where statesmen, soldiers, authors, and critics were all to be found. He was elected to the Athenæum in June, 1890, but never went there very much, and ultimately resigned. His favourite club was the Carlton, to which he had belonged from an early date, and which at various times he used to a considerable extent.

Despite his public activities and his social existence, Darling was a family man and a lover of domestic things. In Lady Darling he had a very real partner. The reason she does not figure more largely in these pages is that she completely identified herself with her husband and his life. By nature she preferred a quiet life in the country, but realised that as the wife, first of a politician and then of a Judge, this was not possible. She gladly threw herself into partnering him in social life, and achieved the same success as she had done in electioneering, in the days when they were first married. Their eldest child was a daughter, Lucia, born a year after the marriage. She married Mr. Keppel Pulteney, when she was twenty. His son, John Clive (Jack), went to Winchester and

subsequently into the Army, serving in the 20th Hussars and the 14th Hussars, being awarded the D.S.O. in 1916, and attaining his majority in January, 1921. As a boy he showed considerable talent for writing verse, no doubt inherited from his father. The second daughter, Diana, who was not born until considerably later and was to become the companion of his later years, is herself a novelist of success and distinction. The Darlings were a very devoted family, but inherited their father's undemonstrative quality, which, indeed, is fairly characteristic of English family relationships as a whole.

Darling had few outdoor tastes with the exception of hunting and riding. I have seen it stated that he was a fisherman; many of his friends were, notably Lord Trevethin, but he himself did not fish. Nor did he shoot, while as for walking, " not unless I had to." Not having been to school, he had never acquired the Englishman's traditional love of games; indeed, his attitude to these as being a waste of time that could be better spent in other pursuits, was more typical of the attitude of the cultured Frenchman of the period. Golf he held in especial abomination, a feeling which he extended to the playing of Bridge. As one who liked to savour the excellence of life he was naturally appreciative of good cooking and wine; but in the whole of his long life he never used tobacco. He had no real taste for music, though in his later years he liked to hear his daughter, Diana, who was an accomplished singer, sing songs with the words of which he was already familiar. As for the theatre, he went, as we have seen, to see the performances of his friend Coquelin and other friends; but, although he had a certain interest in the theatre as a young man, his attendance dwindled as he grew older. He remained, however, an acute judge of acting.

His main interests outside his work and those which have been sketched above were painting, literature and conversation. As a conversationalist he was in the first rank, and at the time of writing many are alive who remember his excellence. He was witty, he was fluent, and he had a delightful voice. But in addition he was a good listener; and above all he never talked shop out of hours, the besetting sin of so many lawyers and of successful men generally. His painting was of more than ordinary amateur merit, and he continued the indulgence of this taste until 1931, when he had already passed his eightieth birthday.

He was a great admirer of French painting, as he was of French literature. He was well-read in French writers over an extended period. He was, as we should expect, a careful student of La Rochefoucauld's *Maxims*, but he was also a reader of Rabelais and well conversant with French mediæval literature. He could also write with ease in French, both prose and verse. He had read at large in the literature of England, and, as became a poet, had a familiarity with the works of the English poets less rare then than it has since become. In prose he was especially fond of Sterne, to whom his own style owed much. He was, as a whole, more appreciative of the eighteenth-century writers than of those who lived nearer to his own day. Scott he had read as a boy, " but could not have done it again." He was not a Dickensian, though, like many lawyers, he was fond of Pickwick. He pointed out to me once what he considered to be a flaw in Dickens's account of *Bardell* v. *Pickwick*, in that Sam Weller was cross-examined by the Counsel who called him, without any application to treat the witness as hostile.

Promotion to the Judicial Bench did not terminate Darling's own literary activities. Besides the new editions of *Scintillae Juris* and the *Meditations*, there appeared, in 1903, his *Seria Ludo*. His name did not appear on the cover, and the book purported to be " By a Dilettante." The title (" I Play at Serious Things ") is taken from Horace, though the phrase is to be found more than once in the literature of Latin hexameters. The book, which was published by Longmans at five shillings, consisted to a large extent of reprints of some of the gay trifles in prose and verse which had appeared earlier in the *St. James's Gazette* and other papers. Some of it, however, like the Essay in Praise of Idleness, was new. The book went tolerably well, some critics penetrating the author's anonymity, others failing to do so. Among the former was the Master of the Rolls, who wrote as follows :

3, Bramham Gardens, S.W.
9 March, 1903.

My dear Darling,

I gave an hour yesterday to studying the meditations of the Sage who has concentrated so much wisdom into his prolusions. Clearly the day was the one best fitted for it. However, he need

not have veiled his identity as it is written in every line of his reflections as clearly as if it had been printed on the title page. The simple fact is, no one else could have done it. I congratulate you upon it. Wit is not common nowadays and there is enough crammed into these fugitive pieces to last a hack writer for his lifetime. I have not finished it yet. It ought not to be skimmed, but to be quietly digested after having been " savoured " in a leisurely manner first.

Yours ever,
R. HENN COLLINS.

In the following year the book achieved the gratifying distinction of being translated into German. Darling continued writing, however, as well as collecting for publication his earlier works. In the early 1900s he broke new ground by contributing several poems to the *National Review*, then at the plenitude of its prestige under the editorship of his friend, Leo Maxse. In 1905 appeared his *tour de force*, *On the Oxford Circuit*, a long poem in English hexameters. Its theme was the sudden death of Mr. Justice Talfourd, who had died on the Bench while delivering his charge to the Grand Jury, at Stafford, in 1854. Mr. Justice Talfourd, like Darling himself, had been promoted Judge from the Oxford Circuit; also like Darling, he was a literary man and poet, being the biographer of Lamb and the author of *Ion*.

Darling wrote to Miss Talfourd, his daughter, expressing the hope that she would not resent his use of the incident as the central feature of his poem. She wrote back to him:

Westcliff-on-Sea,
Nov. 9th, 1905.

Dear Sir Charles,

So far from " resenting " your verses on the subject of my father's death, I am most grateful to you for publishing them, and for reminding the world of one who was certainly one of the brightest ornaments of his generation. . . . The memory of that fateful day in March is very present with me now. Though so startling and overwhelming at the time it was a grand ending to his career! He had a dread of a sick bed, never having had

a serious illness, and he used to say that but for the shock to his friends he desired of all things a sudden death.

With thanks.
Believe me,
Yours sincerely,
KATHERINE TALFOURD.

My youngest brother was the Judge's Marshall on this occasion. He died some years ago.

It is a bold man who ventures on English hexameters, and opinion was mixed as to his wisdom in adopting such a metre. He received by the same post letters from two old friends, A. J. Ram, K.C., a noted wit of the Parliamentary Bar, and F. A. Bosanquet, expressing contrary views. This is what they said :

31, Eaton Square, S.W.
October 30th, 1905.

My dear Judge,

You were very bold to venture your muse upon that difficult steed " Hexameter "—but she managed him nobly, and his long stride has not prevented her from showing as gracefully as though her Pegasus had been an ambling Iambic, or a cantering Saphic.

Many thanks for sending me a copy of these charming verses. I could not have believed that the archaic incidents of a Judge's arrival at Stafford could have been thus invested with the halo of poetry, or enlivened with the spice of epigram—but you have done it. Many of the lines are gems—had I not seen the initials I should have said *Aut Darling aut diabolus*. Give us some more. I long to go among the men of the Circuit to see how each fits his own cap on somebody else's head.

For myself, I am,
Ever Yrs.

Once a Junior not learned in Law
Now a Leader who never could learn it.
A. J. RAM.

My dear Darling,

Thank you so much for the poem on the Oxford Circuit, which I have read with much attention and interest. *But* why did you trammel yourself with a metre of which the English language is incapable ?

> Wearied with waiting in vain for the briefs nepotistic attorneys
> Gave to incompetent youths or the cousins of railway directors.

Such lines are only the exceptions which prove the rule. I wonder whether you ever heard Henry Matthews describe the scene. It was well remembered when I joined the Circuit.

Yours very truly, F. A. BOSANQUET.

On the whole Darling was extraordinarily successful with a metre notoriously difficult in English, as the following lines show. They also display a gaiety in the use of the medium, which might have surprised the stately Virgil.

> Where be they now, those brave boys, erstwhile the delight of the bar-mess—
> Singers of songs, and players of cricket, and riders of races,
> Rowers of flimsiest craft and riders in point-to-point races ?
> Gone—for the most part aloft, as we trust, but, also, some under,
> Wearied with waiting in vain for the briefs nepotistic attorneys
> Gave to incompetent youths, or the cousins of railway directors,
> Wearied, have drifted away—courageous or maybe despondent,
> Where some new colony called for a horse-tamer, farmer, Chief Justice.

But it would be wrong to leave this account of Darling's tastes and recreations without referring to the spiritual side. He rarely referred to it himself, and I did not see any reference in his obituaries to the religious side of him. This was, however, a permanent feature of his make-up. He was a devoted Churchman and attended regularly the church in Kensington where Canon Hannay (whose pen name is George A. Birmingham, the famous Irish novelist) officiated. He was also a very regular attendant at the Temple church, going on from the service to Sunday lunch at the Inner Temple, where he would meet Sir Francis Taylor, Sir William Hansell, Lord Hanworth, and other Masters of the Bench. This was but the outward expression of the spiritual quality which attended him through life and fortified his old age.

CHAPTER XI

EARLY JUDICIAL CASES:
The Voice of Criticism again

DARLING tried his first cases as a judge in the year of the Diamond Jubilee. He tried his last case not very long before the Silver Jubilee of King George V. In one of his early Circuits he asked a young junior, one John Simon, to undertake the defence of a prisoner in a case at Bristol; Simon waited four days in Bristol to take that poor prisoner's defence. Long before Darling retired from the Bench Sir John Simon had declined the Woolsack. The period of his term of judicial office was not only long in time but diverse in interest and comprehensive in its survey of life. It is difficult to know exactly how to treat the life of a Judge, for its continuity is necessarily less apparent than in the case of a politician, whose life may be interpreted as a striving towards certain ends. In the case of a Judge, his only end is the administration of Justice. In pursuit of that he does the work which comes to his hand and that which is imposed upon him. He does not, for the most part, choose his own work; it follows that he does not altogether shape his own destiny. But in the pursuit of Justice, which is the life of a Judge, the social history of the time is more clearly portrayed than in the pursuit of those less abstract aims which are the preoccupation of the politician. The history of manners and of social life is best, because most unconsciously, recorded in the Law Courts. The personality of a man can be no better gauged than from the rôle which he played in the changing pageant of a quarter of a century in the Courts.

The number of cases tried by Mr. Justice Darling was immense. Many of them were trivial in importance except to the parties and the interest of justice; many were of interest to the lawyer, but too technical for ready comprehension by the layman; many followed the wellworn lines of disputes about small contracts or liability in accident cases. Of many of these the judge himself had naturally no individual recollection. But many of the cases which came

before him in that long period were enriched with great social interest or enlivened with high drama. These will be for the most part what are treated of in this book: partly on the grounds of interest, partly because they were cases that made the deepest impression on the mind of the judge himself. But not all will be *causes célèbres*. I have tried to take a cross-section of the cases tried by him, with a view to illustrating at once his personality and technique as a Judge, and the complex social document which those cases portray. I have, however, retained here, as in the earlier part of the book, the chronological sequence without which biography does not properly exist.

The Judge's approach to different types of cases varied; but there were some principles and some practices which remained the same for all. Similarly the cases themselves display not only the infinite diversity of human motive and human conduct, but also the repetition of many sides of the unchanging facet of human nature.

Mr. Justice Darling started his judicial career at the end of 1897 in a blaze of publicity. He faced up well to this searching test, which would have been unnerving to a man with less confidence in himself. Very quickly even his detractors saw that he brought a carefulness, a penetration, and a readiness to listen which they had not altogether expected. A fair proportion of the following year was spent on Circuit, as he went to Maidstone and Guildford in January, the Western Circuit in February with Mr. Justice Bigham, the Midland Circuit from the middle of June until August with his old friend Mr. Justice Lawrence, and the North-Eastern Circuit with Mr. Justice Grantham from the middle of November to the end of the year. These cases on Circuit removed him from the close scrutiny of the London Press. Now, as subsequently, he was a good Circuit Judge, a fact admitted even by those who held the view that his conduct of big cases in London was invested with too light a touch. But he did try, in the autumn of 1898, a difficult case in the Queen's Bench Division, in which the voice of criticism was ready to spring up again, did his handling of it leave anything to be desired.

Huntley v. *Simmons and Others* was of particular interest because it was a Trade Union Case, and one of the lines of criticism directed against his appointment had been the political bias he was supposed to have against Trade Unions. This case was brought

by a cab-driver against the defendants, who were members of a Trade Union. It took the form of a claim for damages for conspiracy, the allegation being that they had conspired to cause a man named Young not to employ the plaintiff. The case was tried before Darling and a Jury, and the Jury found as a fact that Simmons did conspire with other members of the cab-drivers' Union to induce Young not to employ the plaintiff.

Those being the facts, it remained to be decided whether they gave the plaintiff, Huntley, a remedy at Law. This was a point of Law for the Judge to decide. Just previously had been tried the famous leading case of *Allen* v. *Flood*, in which the House of Lords decided that a bad motive in an act which is not in itself illegal does not make that act into an actionable civil wrong. It had also been held in the case of *Kearney* v. *Lloyd* that conspiracy is only actionable where the acts agreed to be done would have given rise to a civil cause of action to the plaintiff, if they had been done without preconcert. In this case now before him, Darling decided that the defendants' acts would not have given rise to such a cause of action because they were not illegal. They were not illegal in spite of the finding of the Jury that the defendants had acted maliciously, because of the recent decision in *Allen* v. *Flood*. He therefore entered judgment for the defendants. Darling's sympathies on personal and political grounds were with the plaintiff, but he did not for a moment allow this to interfere with his interpretation of the Law. It was an early and convincing testimony to his critics of his judicial fairmindedness and legal acumen.

Another case of considerable sociological interest came before him on circuit at Chester the following March, in which a weaver named Upton was indicted for murder in procuring an abortion which had resulted in the death of the woman. In his charge to the Grand Jury, Darling anticipated a good deal of modern thought on the subject of these cases and the views of Mr. Justice McCardie at a much later date. He told the Jury that according to the Law anyone found guilty of this offence was guilty of murder. But it was well known to everyone that the sentences of death which had very recently been passed in three of such cases had been commuted. " The Judge," he said, " has no choice but to pass sentence of death in such cases, but he does it in the full knowledge that within a few hours the Home Secretary will advise Her Majesty to commute it.

To my mind it is putting the Judges and Juries concerned not merely in an undignified position but in an absurd one, and it is not right that the highest penalty which a man has it in his power to inflict should be gravely decreed against people with the full knowledge that the proceeding is nothing but a sham from the moment the trial begins. I am only speaking for myself, but until it has been decided that the Law should remain as it is or that it should be altered in some way, I shall advise the Grand Jury if they think that the wound was not inflicted with intent to kill the woman, not to return a true bill for murder . . . I advise the Grand Jury to assist thereby in putting an end to these unsatisfactory and in some respects ridiculous performances." In this case the Grand Jury took the hint and threw out the bill for murder while in the subsequent trial Upton was found Not Guilty on the other charge.

Darling's independent action in this matter won the compliment of a leading article in *The Times*. The compliment was somewhat mixed, for though the article on the whole approved Darling's action it did not fail to spice its comment with an acid reference to the fact that " Mr. Justice Darling has suspended until further notice the Law as to constructive murder." It then went on to say that " Much is to be said for the ancient practice on the part of the judges of observing the Law which they are sworn to administer whatever their opinion of it happens to be." This again was an anticipation of the criticism levelled against Mr. Justice McCardie in somewhat similar circumstances thirty years later. Having said that, however, *The Times* acknowledged that the motive for his advice was excellent and the excuse for it great. Its remarks were but " one of many signs that there is need of a breath of humanity and good sense being diffused through many parts of our criminal law."

Having thus dealt with Trade Unions and abortion, Darling was called upon in those early years as Judge to judicate upon another question of perennial interest, that of the right of public meetings and of the extent to which it can be limited by provocation. A few years before Salvation Army riots had led to the case of *Beatty* v. *Gillbanks*, still the leading case on street disturbances. The case of *Beatty* v. *Gillbanks* decided that meetings could not be illegal merely because they were bound, or calculated, to provoke illegal acts on the part of opponents. The case of *Wise* v. *Dunning*, which

Darling heard on appeal from a decision of the Stipendary Magistrate of Liverpool, was really a matter of the application of this theory to facts arising out of religious riots at Liverpool.

Wise was a Protestant fanatic who held a number of meetings at that time in Liverpool for the purpose of prosecuting what he called a " Crusade " of the Protestant Religion. His method of doing so consisted largely in abuse of the Roman Catholics whom he called " Rednecks." His method was to put beads around his neck and, waving a crucifix above his head, urge his supporters to arm themselves with sticks for his protection against the sticks which the Roman Catholics were sure to use.

The not unnatural consequence of all this was numerous breaches of the peace and fights between Roman Catholics and Protestants. Wise had ultimately to be rescued by the police, and on being charged before the Magistrate was bound over to be of good behaviour and to keep the peace. The appeal by case stated was heard before a Divisional Court consisting of Lord Alverstone, the Lord Chief Justice, Darling, and Mr. Justice Channell. It was argued on behalf of Wise that he had not incited anybody to breaches of the peace nor had he acted unlawfully himself. Therefore, in accordance with the decision of *Beatty* v. *Gillbanks*, he could not be guilty of a breach of the peace because his lawful acts resulted in the unlawful acts of his opponents.

Lord Alverstone and Mr. Justice Darling disagreed with this point of view. A man is presumed to intend the natural consequences of his acts, and the natural consequences of Wise's acts were in Darling's opinion, " what must be the inevitable consequence if persons whether Protestants or Catholics are to be allowed to outrage one another's religion as the appellant outraged the religion of the Roman Catholics of Liverpool." The natural consequences must not be limited to the legal acts which were a consequence ; in this case the natural consequence of such conduct was illegality. As to Wise himself, Darling quoted with great effect from Butler's *Hudibras* and said that he was one of

> That stubborn crew
> Of errant saints, whom all men grant
> To be the true Church militant ;
> A sect whose chief devotion lies
> In odd perverse antipathies. . . .

The case of *Wise* v. *Dunning* together with *Beatty* v. *Gillbanks* and *The Queen* v. *The Justices of Londonderry*, together lay down the basis of the Law on the subject of public meetings, provocations, and street riots. In any time when political feeling runs high in this country these principles are enunciated and invoked in aid. But the case has also the additional interest of showing that good Law is not incompatible with apt literary quotation.

After the first few years of holding judicial office the criticism which had been directed against Darling's appointment, though not forgotten, was tempered by the realisation that he discharged his duties well. It was the more unfortunate on that account that hostility suddenly flared up again from an influential section of the Birmingham press.

It arose out of a case which Darling had to try at the Birmingham Assizes in March, 1903. A man named Wells was charged with obscene libel, and the case contained much of a distinctly unsavoury nature. To Darling, in spite of his long experience of the Criminal Court as Counsel and Judge, such things were anathema ; and he held strong views as to the undesirability of the publication of such matter. He, therefore, took it upon himself to address the representatives of the press before trying the case. In the course of his observations he said : " the basis of this prosecution is that things were said which (whether they ought to be said at all or in certain places is another matter) are not things that ought to be published to all and sundry, such as newspaper readers . . . I feel that any well-conducted newspaper will not give anything like a full account of what may pass in the hearing of the case. I say that because I hope and believe my saying so will be sufficient. However, I will say this one word in case any newspaper should be inclined not to act upon the advice I now give them ; although a newspaper has the right to publish accounts of proceedings in the law courts, there is absolutely no protection to any newspaper for publication of objectionable, indecent or obscene matter, and any newspaper which does so may be as easily prosecuted as anybody else, and if I find that my advice is disregarded I shall make it my business to see that the Law in that respect is enforced."

Wells was duly tried and no direct reference to the trial was made in the press of Birmingham. But what they lost upon the roundabouts they made up on the swings ; that is to say, instead of

commenting upon the trial, they commented on the Judge who tried it. Thus the *Birmingham Daily Mail* asked if Mr. Justice Darling had come to Birmingham to insult the press. " We are justified," it said, " in asking this question in view of the altogether unwarrantable lecture which he felt it his duty to deliver to reporters this morning. The remarks of the Judge were wholly unjustifiable and unnecessary, and we must strongly resent the reflection upon the press of this city, which we venture to say would never have been made by an older and more experienced Judge."

The *Birmingham Daily Post* and the *Birmingham Daily Gazette* were likewise strong in their comment. " Coming from anyone but one of His Majesty's Judges such observations could only have been dismissed as impertinence, but Mr. Justice Darling may be informed that the gentlemen who supply reports to the press take their orders from the Editor and not from the Bench." Thus the *Birmingham Daily Post ;* the *Birmingham Daily Gazette*, not to be behind, wrote : " The men responsible for the contents of the Birmingham press are as capable of determining what it is becoming to publish as the Judge who took upon himself to lecture and threaten the profession in the Assize Court yesterday."

Such remarks were certainly outspoken and it is extremely doubtful whether any responsible newspaper would adopt such a tone to any Judge in any circumstances at the present time. But it must be remembered that comment was considerably freer and criticism considerably franker in those days than it is today. One paper, however, passed all bounds. This was the *Birmingham Daily Argus*, a less-known paper which was then edited by a spirited young man called Howard Gray, who is now, at the time of writing, a most respected member of the staff of one of England's leading newspapers. He wrote a piece of extremely vigorous invective against Mr. Justice Darling in his paper under the heading " A Defender of Decency." He said, amongst other things ; " Mr. Justice Darling, having so few prisoners to try in Birmingham and feeling the inspiration strong upon him to be a terror to evil-doers, filled in a pleasant five minutes yesterday by giving fits to the reporters. If anyone can imagine little Tich upholding his dignity upon a point of honour in a Public House he has a very fair conception of what Mr. Justice Darling looked like . . . His diminutive Lordship positively glowed with judicial self-consciousness. He felt himself

bearing upon his shoulders the whole fabric of public decency. Terror of Mr. Justice Darling will not trouble Birmingham reporters very much. No newspaper can exist except upon its merits—a condition from which the Bench, happily for Mr. Justice Darling, is exempt." There followed some abuse even more scurrilous, and the article ended with an exhortation to Mr. Justice Darling " to master the duties of his own profession before undertaking the regulation of another. A judge who applies himself to the work lying to his hand has no time to search the newspapers for indecencies."

Such a diatribe could hardly be overlooked. Darling himself was not vindictive. He had, as previously pointed out, had sufficient experience of invective in his political activities to rate its importance very low; and besides he was rather amused by the vigour of its expression. But for public reasons the matter could hardly be overlooked, for it was a direct libel on the Judge of Assize in the town of the Assize; and in constitutional theory a Judge on Circuit stands in the place of the Sovereign. Consequently the Attorney-General, Sir Robert Finlay, advised that a contempt of court had been committed for which the editor and proprietor of the paper should be proceeded against.

Gray came up before a Divisional Court consisting of the Lord Chief Justice, Mr. Justice Grantham and Mr. Justice Phillimore to answer for his contempt of court. He had, in fact, already answered by affidavit, the style and sentiments of which offered an agreeable, if surprising, contrast to his article of a few days before. In his affidavit he apologised for using terms " intemperate, improper and ungentlemanly, and void of the respect due to his Lordship's personal office. I humbly apologise to his Lordship and the Court for my conduct and for my inexcusable and insulting language, which reflected not only upon the individual Judge but upon the Bench of Judges and Administration of Justice; and I submit myself to the merciful consideration of the Court."

As the Lord Chief Justice considered that the article was clearly " scandalising " to the Judge, and therefore contempt of Court, there seemed no particular reason why much merciful consideration should be shown. But in fact, Mr. Gray's apology stood him in good stead and he escaped with a fine of £100 and the payment of £25 costs.

More interesting than the individual fate of Mr. Gray is the question whether the machinery of contempt of Court could really be invoked against him. Contempt of Court is an ancient offence which, in one of its varieties, was defined by Lord Hardwicke as " scandalising the court itself, abusing parties, prejudicing mankind against persons before the cause be heard." Another type of contempt was defined by Lord Wilmot, Chief Justice, as the " arraignment of justice of Judges in arraigning the King's Justice . . . wherever men's allegiance to the law is so shaken it is the most fatal and dangerous obstruction of justice." The doubt which arises in this case is as to whether Gray's conduct could in fact be contempt of court, since it did not actually prejudice any case which was in fact, pending, this being in the opinion of some authorities the essential element of contempt of court. According to this point of view, a Judge *qua* Judge has no special remedy for insults to himself. However, as far as Gray was concerned, the matter was one of academic interest, since he could have been proceeded against in the Criminal Courts for libel on an information by the Attorney-General—this being the form of procedure adopted in the case of Mylius, who libelled the King in 1911. So Gray would have come to the same fate only by a different procedure and in a different Court.

As for Darling himself, the incident was unfortunate, coming as it did at a time when he had shaken down effectively into the judicial saddle. It was, however, perhaps fortunate for him that Gray did perpetrate his unpardonable attack upon him ; for its inevitable effect was to divert the sympathy that might have been felt for the press of Birmingham as a whole into a feeling of annoyance against its particular member whose enthusiasm had led him to transgress the boundaries of fair comment.

Darling's comment was in itself undoubtedly unwise. It does not require much knowledge of the proud and powerful corporation of the press to guess what their reaction would be to a not overtactful lecture, read to them on the conduct of what was their daily business. At a later stage in his judicial career he would never have made this mistake. But it illustrates the dogmatism and implacability, amounting almost to pugnacity in the presentation of his views which had been a characteristic of the Darling of the 19th century, but was not appreciated by that younger generation

who knew him only as the wise and witty Judge in the 20th. It was, however, such expressions of this side of what may be called his political as opposed to his judicial nature that some critics genuinely feared at the time of his appointment. It says much for his real genius for judgeship that this was virtually the only instance in which justification might seem to attach to those fears. His handling of a case was not again called in question by the press until fifteen years later, when it fell to his lot to preside over the most sensational case ever tried in an English Court.

CHAPTER XII

CASES GRAVE AND GAY

IN the year 1904 Darling had a vivid experience in the Courts, though not in connection with a case which he was himself trying. In that year, Whitaker Wright, the famous North Country financier—whose rise and fall is perhaps the most dramatic of all that long series of dramas centring round the fallen favourites of fortune who have worn the tinsel crown of unsound financial greatness—was tried on charges of falsifying balance sheets. On the final day of the trial, when the Jury returned, Darling, whose list had finished early that day, unrobed and accompanied Mr. Justice Bigham, later Lord Mersey, who was trying the case, to the bench. The Jury found Whitaker Wright guilty, and the story as it affected Darling can best be told in the words in which he described it to me: "I looked at Whitaker Wright as sentence was passed upon him and saw his hand go in the direction of his pocket. I was horrified. 'Good heavens!' I thought, 'He has got a gun and is going to have a shot at Bigham. These people are always too strung-up to aim straight, and he is bound to miss Bigham and hit me. What a way to end my judicial career—shot, and not even in my own Court!'"

In point of fact Whitaker Wright did have a six-chambered American revolver in his pocket, fully loaded and cocked; he was able to have it as his case was tried not at the Old Bailey but in the Law Courts, where there is no provision for search. But he did not produce it. What he may have been doing when Darling saw his hand go to his pocket was getting the tiny tablet of cyanide of potassium which he swallowed, and which caused his death in his room upstairs. Be that as it may, Darling's foreboding, though nearer the truth perhaps than he had jokingly thought, was happily not realised in fact.

Not many cases affect a judge so personally and so vividly as

that described in the last chapter. Nor is every case one in which a judge can either express his own sociological views or find scope for their application. Most cases that a judge is called upon to try, affect him personally only in the sense that they are the stuff of which his life is wrought. Some are humdrum and some dramatic, but whether ordinary to the lawyer or interesting to the spectator, they constitute a moment of drama, and possibly of apprehension, in the lives of the parties involved.

The case of " Kitty " Byron which Darling tried at the Central Criminal Court in December, 1902, belonged to the class which was dramatic in its circumstances to the general public as well as to those engaged in it. It was tried at the Old Bailey, before that Court was demolished and the new and less distinctive edifice erected, which bears the name of Old Bailey today. This was a point of which Henry Dickens, K.C. (son of the novelist and later, as Sir Henry Dickens, Common Serjeant of London), who led Mr. Travers Humphreys for the defence, made apt use in his final speech for Kitty Byron. Sir Henry said in his old age that, looking back upon his life, it was the most pathetic case with which he had been brought into contact in a long experience of the criminal courts.

There was no mystery about the Kitty Byron case. Nor was it the first murder case that Darling tried ; but it was the first time he had to try what might properly be called a *cause célèbre*.

The story was in essence the old and familiar one, of illicit love and frenzied passion. Kitty Byron, an attractive young dressmaker of twenty-four, had for some time been living with a middle-aged member of the Stock Exchange, Arthur Baker, a married man. The course of true love did not, however, run very smoothly. In November, 1902, so violent did their quarrels become that the landlady was forced to give them notice. When Baker had left the house Kitty Byron went to the landlady and apologised for the disturbance. The landlady, apostle of respectability, felt it her duty to repeat to Kitty Byron some disparaging remarks that she said Baker had made. This had the effect of making poor Kitty unhappy, and seeing this the landlady said, " What do you live with a brute like that for ? " To which she replied, " I love him ; I have lost my character and I can't get any work."

Shortly after this she left home and went to Oxford Street,

where she bought a knife with a long, strong blade. With this hidden in her muff she hurried to Lombard Street, walked into the Post Office, and sent an express messenger for her lover. Baker came back with the messenger and found his mistress standing on the top of the steps. Quickly she drew the knife from her muff, and, there in the heart of one of the busiest thoroughfares of London, stabbed him three times till he was dead.

The sensation in Lombard Street was immense, nor was it in any way lessened when Kitty Byron threw herself on the dead man's body crying, " Let me go to him ; let me kiss my Reggie." She was promptly arrested, and said, " I killed him willingly and he deserved it ; and the sooner I am killed the better."

This latter sentiment briefly expressed the point of view of the prosecution ; but Mr. Dickens was on strong ground in the appeal *ad misericordiam* to the male Jury. This was the case of a woman loving not wisely but too well, of a woman bestowing her love where it was least deserved. " The Court in which you sit will soon be demolished," he said, " but I doubt whether there has ever been so piteous a sight as the spectacle of this young girl on the threshold of her life awaiting your verdict whether she is to live or die." Five days after her conviction and sentence she was reprieved.

Very different from this touching story was the case of " Chicago Mae " Churchill, which Darling tried five years later at the Old Bailey. The *dramatis personæ* in this case were international crooks, who carried their feuds and their tattered reputations from one continent to another. Chicago Mae, an enterprising lady of thirty or so, described herself as an artist ; but in fact her artistry was chiefly exercised in devising situations whereby she got men into compromising situations and then proceeded to blackmail them. In 1901 this amiable lady became the mistress of a man named Eddie Guerin. Unfortunately for the continued happiness of her liaison they were both soon arrested in Paris on the charge of robbing the American Express. For this peccadillo Chicago Mae was sentenced to five years' imprisonment, while Guerin was sentenced to penal servitude for life on Devil's Island.

Even Devil's Island, however, was incapable of holding Eddie Guerin. In 1905 he escaped in a boat with two other men, and, coming to England by way of America, renewed his acquaintance

with Chicago Mae, who had by this time been released. By the following year he was tired of her and anxious to quit. This fickleness made her very angry, and she threatened to send him back to Devil's Island. Sure enough, shortly afterwards Guerin was arrested on an application by the French Government for his extradition. His case was duly heard at Bow Street. It was evident that someone had given him away, and Guerin had no doubt that for this kind service he was indebted to his former mistress. He was kept in Brixton Prison for more than thirteen months while his case was argued in the courts. Ultimately it was held that as a British subject he was not liable to extradition and on June 14, 1907, he was released.

While in prison, Guerin had made the acquaintance of a younger man named Charles Smith, an American of twenty-five, who had made such good use of his time that he had already been deported from South Africa, and had celebrated his arrival in England by robbing an hotel in Southampton before coming on to London. At the time he met Guerin he was serving a sentence of four years' penal servitude. They talked about Chicago Mae and Smith was very sympathetic, saying that he knew the lady himself, had suffered at her hands and intended to get even with her on his release from prison. Shortly afterwards he did get out of prison, and made the acquaintance of Chicago Mae whom he had not previously known. That acquaintance ripened into the easy intimacy which was that lady's favourite relationship with the other sex.

The news of Guerin's release naturally came as a shock to the precious pair. But they were equal to all emergencies, and equipped themselves in what they considered the proper manner, Smith with a loaded revolver and Chicago Mae with a knife carried in her bag. Thus armed, they set out in quest of Guerin, and came by their man in Russell Square. They got their cab to draw up, and alighted on opposite sides. Without hesitation Smith walked up and fired six shots from his revolver at the stationary Guerin. It says little for the marksmanship of this desperado that the sole result of this fusillade was that one shot struck Guerin in the foot. A policeman gave chase to Smith and an exciting hue and cry followed, ending in the constable, with the aid of an increasing contingent of civilians, capturing his prey. Meantime

Guerin had sighted Chicago Mae in the doorway to which she had withdrawn to witness the shooting. He gave her into custody in the presence of an admiring crowd. " I know nothing about it, I was in the cab alone," she said. On arriving at the police station Smith said, " He fired two shots at me and threatened to throw vitriol at Mae. Do you think I could stand that ? "

In the trial of Chicago Mae and Smith for attempted murder, the tactics of the defence were obvious. They alleged that it was, in fact, Guerin who had been the aggressor ; Chicago Mae was in desperate terror of him and Smith had merely fired to frighten him and prevent his doing violence to the woman. To substantiate this defence Counsel cross-examined Guerin very fiercely to show that he was a reckless and violent fellow. He, however, stood up up to it well and, while admitting quite frankly that he had been convicted more than once, insisted that it had never been for crimes of violence. As for his feelings to Chicago Mae, he did not bear her any malice for his fifteen months' detention in Brixton Prison, for it was thereby proved that he could not be extradited and was, in consequence, safe in England.

Darling, trained in the estimating of evidence and in assessing the weight of credibility which should be attached to witnesses, had little difficulty in determining which of this trio of criminals was in fact telling the truth. Guerin was admittedly a bad man in many respects ; but, as Darling pointed out, that did not mean that he was not entitled to the same protection in regard to his life as the best of us. It was not for the prisoners to judge him. After his summing-up the Jury found both prisoners guilty of shooting with intent to murder. Darling, however, drew a distinction between the two in that Smith, who had done the actual shooting, had no quarrel with Guerin at all. Chicago Mae, on the other hand, was entitled to more consideration for the extenuating circumstance that she really was in dread of what Guerin would do to her, even if her fear was unfounded. For this reason he made a distinction in his treatment of the pair, sentencing Smith to penal servitude for life and Chicago Mae to fifteen years. As he was removed by the warders, Smith showed his appreciation of this leniency to his lady by cursing the interested, but impassive, judge in the vilest language.

Not all the cases a judge has to try are cast in the stern mould of gruesome adventure which characterised the stories of Kitty

Byron and Chicago Mae. The majority touch more nearly the ordinary lives of the mass of people for whom laws are primarily intended. Some, so far from being the grim tragedies with which the Courts are so popularly associated, are cases which seem light and even trivial, judged by the standards of the common round. Some Judges approach such cases with an inner feeling of impatience ; but to Darling with his keen appreciation of the lighter side of life, they never came amiss. He always did justice, for that was his duty ; but to him an unrelieved dietary of the emotionalism of cases like Kitty Byron's and the blood-and-thunder background of the drama of Chicago Mae would have seemed heavy fare. Two cases which he tried in these years, which gave a more appropriate outlet for his natural lightness of touch were those listed, in the plain unvarnished manner of our Courts of Law, as *Grahame* v. *Fuller* and *Horspool* v. *Cummings*.

It is one of the curiosities of English legal history that the names of obscure people suddenly become invested with an unlooked-for immortality as representing a rule of law. Such cases are *Allen* v. *Flood*, which has already been referred to, and *Hadley* v. *Baxendale*. This latter was the occasion of a witticism made by Darling to a brother Judge at about this time. It is quoted in the courts as a leading case of remoteness of damage, and was concerned with the well-known firm of Pickford, the carriers. When Mr. Justice Pickford became Lord Sterndale he asked Darling's advice as to the coat of arms he should adopt. Without a moment's hesitation Darling replied, " Why not Hadley and Baxendale ? " The advice was not followed.

Grahame v. *Fuller* is not a case in which the names of the parties have been enshrined in the Pantheon of legal decisions. They would have been greatly surprised had it been so. For Gracie Grahame and Katie Fuller both belonged to the honourable and popular profession of music-hall artists, Mrs. Fuller being known in the profession as Katie Lawrence. Both ladies delighted their audiences with little songs, sung in little voices, after the charming manner of the time. What effect they would have had on an audience today it is impossible to judge, for nowadays audiences are reduced to almost the same degree of mechanical uniformity as the performances to which they are subjected. But our Edwardian ancestors were a more robust and individual type ; they were more

easy to please because they were more pleased with themselves and the world. Therefore Miss Katie Lawrence won applause with a song called " Oh ! Charlie, come to me," which had the charming theme of a singer pretending to have lost her husband, whom she had just married, and finding him again among the audience. Sad to relate, an effort was made to restrain Miss Katie from singing this song, which Miss Gracie claimed was her own composition in which she had the copyright. The legal quarrel between these two ladies fell to be judged by Mr. Justice Darling.

Miss Gracie's case was that she had composed the tune and written the words and music of the chorus, and had gone to a Mr. Lambe with a view to getting him to write the verses. She gave him £3, but this princely sum was not sufficient to get any verses from him, and so she had to get two other men to write them before she could sing them. She then made the humiliating and annoying discovery that Miss Lawrence was singing a song with a similar idea, the same title, and the same tune, at the Croydon Theatre of Varieties. She went to see Miss Katie to suggest that they should each sing their own version, but to this suggestion of compromise the other turned a deaf ear. Miss Katie admitted buying the song from Lambe and Miss Gracie contended that Lambe got the idea from her.

Counsel for Miss Katie cross-examined Miss Gracie as to her claims to musical originality. In response to this she freely admitted that the first three bars of the chorus were taken from an old hymn called " Come to Glory " . . . and something to the effect of . . . " Hallelujah ! " The following dialogue then took place :

COUNSEL : Could you write me a bar of music ?

GRACIE : Yes, I could. (A piece of paper was handed to her.)

DARLING : I tell you at once, Mr. Thomas, I shall not allow you to sing it.

Miss Katie's story was that she had bought the song from Lambe who had composed it and put it to music. Lambe was cross-examined as to his share in the business and he said that it was the version which Miss Gracie sang. In her version the man in the audience whom she recognised as her husband threw his hat at her and walked out. This, in Lambe's opinion, was vulgar in the extreme ; in his version the man behaved with a more appropriate gallantry and went on to the stage and took the lady home. He

had heard the other version and could truly say that a literary gulf would describe the difference between them. Darling then read the plaintiff's masterpiece, which ran :

> Oh ! Charlie, come to me,
> For you've had to roam,
> For I've been and lost my return half ticket
> And I can't find my way back home.

Darling's professional interest as poet was aroused. What, he asked, does the third line rhyme with ? To this Mr. Atkinson, for the plaintiff replied, " I think the last two lines are intended to form one long sentence."

DARLING (*to writer*) : Did you read it over when you had written it to see if it made good sense ?

WRITER : I felt rather guilty.

DARLING (*to Atkinson*) : He ought to have what you call a long sentence.

Everybody having thus enjoyed themselves to the full, Darling proceeded to the serious business of giving judgment ; and it may be mentioned that while enjoying the lighter side of a case he never forgot that, whatever the subject matter, the importance to the parties was the same. The point he had to decide was whether Miss Gracie had given the order to Lambe to write the song, or whether Lambe was the inventor of the song and Miss Grahame had appropriated it. " I cannot help saying it is rather melancholy that there should be any legal copyright in such rubbish ; but it is quite possible to have a copyright in arrant nonsense, and if it be nonsensical enough there appears to be plenty of people to create the demand for it. Someone had said that he did not care who made a nation's laws so long as he was permitted to write its songs. That is the position attained by Lambe and other poets. They are doing more than make history ; they are furnishing songs for the nation. It is not unlikely that the plaintiff will in time replace it with another song ; for even so good a joke as a man in the audience throwing his hat upon the stage is apt to pall after a time."

Darling then analysed the evidence and came to the conclusion that it was Lambe and not Miss Gracie who was the original inventor of the song and gave judgment for the defendant accordingly, but not before he had delivered himself of another witticism in recalling



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"JUDICIAL LIGHT WEIGHT"

that the poet Gray had been inspired to write the immortal line, "Where ignorance is bliss, 'tis folly to be wise," by the distant prospect of Eton College.

The case of *Horspool* v. *Cummings* was a libel case arising from the not unusual circumstance of a man denouncing what he believed to be a thoroughly fraudulent proceeding and finding himself the defendant in a court of law as a result. Mr. Horspool was a gentleman who founded the Horspool Natural Voice Academy, Ltd., which he advertised as follows:

> Vocal Discovery of the Century—Guaranteed to all those who are not vocally malformed, irrespective of age, a singing and speaking voice of full compass and without a break; without any body or breath effort, without vocal fatigue and hoarseness. Of invaluable benefit to the clergy, Members of Parliament and lawyers, a positive cure for stammering.

These pretensions did not meet with the approval of Dr. Cummings, who denounced them in a lecture at a musical conference at Buxton. Mr. Horspool complained that the receipts of his Academy fell as a result, and brought his action. To which the defendant replied that the words complained of were fair comment on a matter of public interest. Counsel for the defendant were Mr. Henry Duke, K.C., subsequently Lord Merivale, and Mr. Fraser, later a Judge, and a great friend of Darling's. Counsel for the plaintiff were two well-known men whom the years were to invest with a more ample celebrity: Mr. Hemmerde, later Recorder of Liverpool and well known as the author of the Divorce Court drama "The Butterfly on the Wheel," and Mr. Croom-Johnson, later M.P. for Bridgwater, and Recorder of Bath.

Mr. Horspool, in evidence, said that as a young man he had sung as bass in the Lincoln Cathedral Choir, but had suddenly lost his voice. He had spent the next thirty years in trying to recover it, and the system he had evolved was a tribute to these researches. He had studied the great singers and had worked under Sir Henry Irving. "I hope," remarked Darling, "you were not responsible for his method of speaking." Mr. Horspool then entertained the court with a rendering of "Come into the garden, Maud," which a later witness described as "plummy." The years dimmed the impression on Mr. Justice Darling's mind, but at the time he seemed

to have borne it with admirable fortitude. Mr. Horspool continued to elaborate his theories by explaining that the cavities of the head should be used for resonance. "Do you mean people with hollow heads?" asked Darling, who remained unimpressed with this reasoning.

Mr. Duke then proceeded to cross-examine Mr. Horspool in his own deep voice. Mr. Horspool's voice, according to himself, was now as well produced as it could be. "Is it a perfect voice?" asked Mr. Duke. "It is as perfect as possible," replied the plaintiff. "I cannot sing like the Archangel Gabriel." "I do not think I have ever heard him," said Mr. Duke. "That, Mr. Duke," said Darling, "is a pleasure to come."

The cross-examination proceeded:

MR. DUKE: I want someone upon whom you could have relied in 1906 as showing you could produce the perfect singing voice.

PLAINTIFF: I had meant those whose voices were perfectly produced; the pupils were satisfied.

DARLING: Many people are satisfied with themselves who cannot satisfy others.

PLAINTIFF: I give people the full compass of which they are capable. If they have no ear, they cannot sing.

DARLING: Any of the persons taught by your correspondence system might never be able to sing?

PLAINTIFF: Yes.

DARLING: But he would be satisfied with his own performance?

PLAINTIFF: Yes.

DARLING: As I understand it, if his system were applied to a crow and a canary, one would be the perfect singing crow and the other the perfect singing canary.

Various pupils of Horspool's then rallied to the rescue. They included a Congregational minister who had suffered from hoarseness, a Winchester master who had recovered his voice after losing it through diphtheria, but with the becoming modesty of a scholar and a gentleman he did not yet claim to possess the perfect singing voice; a retired colonel, who volunteered the information that interference with natural breathing was the cause of lung and chest trouble in the Army. At this Darling remarked that the acceptance of the system by the War Office showed that they were not as impervious to new ideas as was generally supposed. These were

followed by a chorus girl, who had recovered her voice after a fortnight's treatment and to whom counsel gallantly said that it was a case of gilding the lily, and a Church of England student whose voice was originally poor in volume but who favoured the court with a thunderous recital of the Charge of the Light Brigade.

But all these efforts counted for little against the expert evidence of Mr. Milsom Rees. He was called for the defence and said that he had examined some of the plaintiff's pupils after treatment and in three cases there were ruptures of the ligaments of the vocal cords. There was no system that he knew of that would produce a great singer and he spoke as one who had counted Patti, Melba and Tettrazini among his patients. Sir Charles Santley gave similar evidence.

Darling then summed up, impressing upon the Jury that teaching singing was not like teaching a number of recruits the goose-step, for there was no one universal method. It might be fair, although some people might think it was wrong and some people that it was right. Sir Charles Santley having heard the plaintiff's system described—namely, that we must make a face and sing like a baby and then protrude our lower jaw—used stronger language about the system than the defendant did about the advertisement. The Jury evidently thought likewise, for they required only a quarter of an hour to return a verdict for the defendant.

CHAPTER XIII

ENTER BOTTOMLEY

ONE day there appeared in *John Bull* a small paragraph "directing attention to one of the most remarkable men who ever sat on the Bench." It ran :

> A great lawyer and erudite scholar, a keen wit—and withal a very human being—Mr. Justice Darling stands out as the most striking personality of the English Bench. We would always gladly lose a case before him for the pleasure and advantage of his company ; and nothing worries us more in these latter days of our conventional respectability than the absence of our name from his Lordship's Cause List.

The writer of this paragraph was Horatio Bottomley ; and certainly in one way and another he had a good deal of Darling's company in the Law Courts. Bottomley himself was a most curious mixture of ability, real powers of eloquence, vanity, vulgarity and downright folly. All of these qualities could be exhibited and displayed to the best advantage in the Courts of Law. He litigated on an unparalleled scale. The most casual glance at this period at the lists of the King's Bench Division or of the Bankruptcy Courts revealed the name of Bottomley. The legal profession viewed him as a veritable gold mine. But he was less lucrative to Counsel than he might have been, as they were briefed only to oppose him ; for himself he almost invariably appeared in person. He used to describe himself—and many others have followed him in doing so—as the greatest lay lawyer ever known. This was perhaps an exaggeration, but a natural tactical flair, coupled with the experience derived from his observation as a shorthand-writer in the courts in his youth, made him a most formidable opponent. Nobody but an able and eloquent man could have litigated with such success as Bottomley ; nobody but a vain and foolish man would have litigated with such frequency.

Enter Bottomley

Bottomley achieved an early acquittal before an Alderman of the City of London which gave him a great reputation for forensic invincibility. It also gave him an inexhaustible taste for litigation. His cases, apart from those in the Bankruptcy Court with which Darling was not concerned, fall mainly into two categories ; those imposed upon him by his curious and multifarious schemes for making money, and those which came as result of his provocative habit of attacking people in the columns of *John Bull* and elsewhere. A large proportion of both varieties of litigation found their way into Darling's Court.

A curious case, which Darling tried, involved not only Bottomley but two other notorious characters of the time. It happened this way. Crippen, whose trial is referred to in a later chapter, was lying under sentence of death in Pentonville Gaol ; his solicitor was a famous solicitor of the day and a close friend of Bottomley, Arthur Newton. Bottomley generously arranged to pay the costs of Crippen's defence, in return for the opportunity of exploiting the matter journalistically. Accordingly, Bottomley addressed an open letter to Crippen, exhorting him to the solace of confession, in the following terms :

" Brother, how came you to do it ? What demon possessed you ? Relieve your burning brain, confiding to me the name of your accomplice." The idea was that Crippen should send his reply to this stirring appeal. Unfortunately for Bottomley, this was just what he did not do. But obstacles such as this were of small moment to a man of Bottomley's adroitness ; if Newton's story is to believed, he simply dictated the reply himself. The story got into the Press, and Newton appeared before the Divisional Court, charged with having unlawfully disseminated false information in the shape of " Crippen's Reply." Darling was one of the Court, and when Mr. Shearman said that Bottomley's staff did not, of course, know as much law as their Lordships, he remarked, " Ah, that will be news to them, I am sure."

Darling also sat in the Divisional Court when Bottomley appealed by way of case stated against a conviction at Bow Street for publishing a proposal for a sale of tickets in a lottery that he was at that time running, called the Derby Sweepstake. Bottomley's contention was that his article was not intended to subserve the cause of any particular sweepstake, but was editorial matter and part of a

general controversy on the ethics of sweepstakes. Darling decided the appeal in favour of Bottomley, on the grounds that, although Bottomley's article was certainly favourable to sweepstakes, it did not come within the scope of the Lotteries Act of 1823, under which he was charged. It might be, as Darling pointed out, that he would have been guilty of an offence under the later act of 1836 for advertising a lottery, in which case he would have been liable to be mulcted in the sum of £50 for each copy of the paper published. But he was not so charged, and therefore there was no alternative save to uphold the appeal. This he did with the concurrence of Mr. Justice Lawrence and Mr. Justice Sankey, who made up the Court with him.

These facts should be born in mind by those who, like a recent writer, hold the view that Darling was " bamboozled " by Bottomley. The judges sat to administer the Law, not to express an opinion on the morality of Bottomley's act. It was not their fault that he had been charged under the wrong Act ; their duty was merely to decide as the legal position created by the facts which were actually before them.

Many of Bottomley's cases were, however, libel cases, with himself as defendant in his rôle as Editor of *John Bull*. One of these, the action brought against him and *John Bull* by a solicitor, Julius Beardell, whom Bottomley had charged with getting out of the country a witness in an action that was pending, was remarkable primarily as an instance of Bottomley appearing in person amidst an array of the most prominent members of the Bar. Sir Edward Carson, Mr. Montague Lush, K.C., and a Junior appeared for the plaintiff ; Mr. F. E. Smith and a Junior appeared for *John Bull*, while Odham's Press, the printers of *John Bull*, were represented by two counsel who have gained considerable fame as playwrights, Mr. Hemmerde, K.C., and Mr. Wool, author of *Libel*. The case ran for two days, in May, 1909, and resulted in a victory for Bottomley.

More interesting was a case tried rather later, which brought into conflict before Darling two spectacular personalities of the day—Bottomley, and T. W. H. Crosland. Crosland, the son of a Methodist minister, was a considerable literary and Bohemian figure of the day. He was a brilliant if rather erratic character, and at this time was associated with Lord Alfred Douglas in editing a well-

known periodical called the *Academy*. Lord Alfred Douglas has written an unflattering epitaph of his colleague in his poem "The Unspeakable Englishman," which starts: "You were a brute and more than half a knave."

Crosland made some observations in the *Academy* which involved him in proceedings for Criminal Libel. He was put on his trial at the Old Bailey and acquitted. The acquittal was a matter of considerable chagrin to Bottomley, who disliked Crosland on account of the attacks upon his various financial activities that appeared from time to time in the *Academy*. Bottomley had anticipated a conviction, and had characteristically failed to keep his disappointment to himself. He published a paragraph in *John Bull* commenting on it. Crosland resented this, and wrote asking for an apology. Instead of an apology Bottomley inserted an open letter in the familiar pages of *John Bull*. It ran as follows:

> To T. W. H. Crosland, Esq.,
> Notorious confrère,
>
> I observe you are angry with me for commenting on your recent amazing acquittal, just as you did on mine a year ago. But I contented myself with pointing out that the Jury probably attached very little importance to a libel coming from you, tho' I might have adopted the other alternative that they were mad.

Crosland brought proceedings for libel, and appropriately enough the case found its way into Darling's list.

When the case came on in March, 1911, Mr. Hayes, Counsel for Crosland adopted the tactics of refraining from putting his client in the box—always a dangerous course in a libel action. Mr. Hayes contended that it was for Bottomley to discharge the onus of justifying the libel contained in the article. This Bottomley cheerfully proceeded to do with his customary vigour and address. His case, as he outlined it, was that Crosland was a man of notoriously bad character, a blackmailer and a vampire; the verdict of the Jury was amazing because they had found that there was no publication after Crosland had admitted it. "If," he proclaimed, "there has been any technical libel, I have still a farthing left for this mysterious and retiring gentleman who has not the pluck to go into the witness box." Mr. Hayes then proceeded to cross-examine Bottomley

before a crowded court, which followed with approval the give and take of the exchanges.

"What is your occupation?" asked Mr. Hayes.

"I am Editor of *John Bull*, and an Honourable Member of Parliament," was the reply.

"You have written a book—the Bottomley book?"

"Yes." Here Darling intervened to ask whether it was prose or verse.

"Mr. Bottomley would, I suppose, call it prose," replied Mr. Hayes. He then quoted a passage from the book which ran:

"We shall keep a watchful eye on the law courts and the judges," and asked Bottomley whether he had kept an eye on the Judges.

"Yes," replied Bottomley amid laughter, "and they have kept an eye on me."

The case was continued in this cheerful vein, Mr. Hayes asking Bottomley about a libel action, which he had withdrawn after claiming £2,000 from a man in Scotland.

"What," said Darling in affected surprise, "£2,000 from a Scotchman?"

The cross-examination proceeded:

HAYES: You withdrew your claim when you found he could not possibly pay?

BOTTOMLEY: I withdrew it when he apologised.

DARLING: Can I help you, Mr Hayes? You know I am half a Scotsman myself and there is a saying "You canna take the breeks off a Hielander."

At the conclusion of his evidence Bottomley, determined to get Crosland into the box, took the unusual but not unknown course of calling him as his own witness. Here, however, a difficulty arose. Crosland had not been subpœnaed, and was not to be found in Court. An agitated search during the adjournment failed to reveal in what place of refreshment he was engaged. Consequently, Bottomley had to get on as best he could without him, and naturally made much of Crosland's inaccessibility. "If Mr. Crosland's character has been outraged," he asked the Jury, "why can he not even take the trouble just to look in to hear how the case is getting on?" Mr. F. E. Smith who as usual represented *John Bull*, was even more forthright, saying that if Crosland's counsel had advised

him not to go into the box it must have been because he knew things about him before which Bottomley's allegations paled. Mr. Hayes, in reply, said that Bottomley had abused Crosland without a scrap of evidence and circulated a libel in his journal which had a circulation of 500,000. "Double that," said Bottomley on hearing these figures. "Thank you, Mr. Bottomley," said Mr. Hayes. "You have doubled the libel." But whatever the effect on the libel, the admission certainly did not double the damages, which were estimated by the Jury at the farthing of which Bottomley had proclaimed himself the proud possessor. It only remained to be decided as to whether the plaintiff should have the costs of the action. The rule in such cases is that the costs follow the award, unless the Judge in his discretion rules otherwise, as on these occasions he not infrequently does. In this case Darling took the view that, since Crosland had not been in Court to support his claim or to submit to cross-examination he was not entitled to the costs of the action.

So once again Bottomley went his litigious way rejoicing. The occasions on which he had appeared before Darling had been as high-spirited as they had been humorous. His own wit and cleverness had made the cases in which he appeared amusing to try, although the rascality of the man showed through his pretentious façade. Indeed, Darling himself always thought it was foolish of litigants to bring proceedings against Bottomley at all in these newspaper cases. The years that were to follow—and they were years in which Bottomley deserted the Law Courts for the rostrum—were to expand that façade to phenomenal heights of impressiveness, and to obscure entirely the rascality which sheltered behind it. As the status of the man advanced, so inevitably did it make his final declension the more complete. When we next meet Bottomley in the pages of this book he is on the edge of that precipice to which he had raised himself, down which the processes of Law, which he had so long used and so often abused, were then everlastingly to cast him.

CHAPTER XIV

WAS STEINIE MORRISON A MURDERER?

ON the night of December 31, 1910, when, in the fashionable quarter of the West End, the New Year was being introduced with its customary ritual of lavish gaiety, the unfashionable and unfrequented area of Clapham Common was a setting for a more sinister scene. As the New Year dawned reluctantly over the dreary expanse of the Common, it revealed something which had no right to be there; it was the dead body of an old man. He was identified as Leon Beron, an elderly Russian Jew from Whitechapel, renowned for his miserly habits. The trial of Steinie Morrison on the charge of murdering Beron was, with the possible exception of the trial of Armstrong in the next decade, the most celebrated murder case that fell to Darling's lot in his long career on the judicial bench.

Steinie Morrison was of the same race as Beron, but considerably younger. He was well built and, with his curly black hair and emphatic features, not entirely without good looks in a coarse way. He supported life in the main by robbery which excited less comment than might have been expected in the peculiar milieu in which he and Beron moved. They lived in the East End of London in the middle of a curious international Jewish colony, in which many of the inhabitants were unable even to speak the language of the country which had the doubtful privilege of according them its hospitality. Fletcher Moulton's description was not inaccurate when he referred to the irresponsibility of their character and their strange *far niente* lives. Thus Solomon Beron, brother to the dead Jew, described himself at the trial as a gentleman of independent means living on his income; in sober fact this meant that he resided at Rowton House for the rent of 7d. per night.

Leon Beron himself was, if no more bizarre, a trifle more

complicated. He enjoyed an income of no less than 10s. a week, out of which he paid 2s. 9d. for his room (9d. of this being contributed by his brother), and 1s. 3d. a day for other living expenses. Yet he had a massive gold watch and chain with a five-guinea piece upon it always in evidence. He spent all day in Suel War's restaurant, and was not observed to do any work. Local rumour had it that he and his brothers were claiming a fabulous fortune to which they were entitled. Beyond vague and impressive references to it, however, no steps were taken towards the recovery.

On the night of New Year's Eve, Beron was in his favourite restaurant until 11.45, and was seen in Sidney Street, Whitechapel, five minutes later. He was never seen alive again. His body, when discovered on Clapham Common, was without the £12 which, according to his brother, he was carrying on that day, and the handsome gold watch and chain had disappeared. What had taken Beron to Clapham Common and in whose company had he gone to that unlikely spot?

Suspicion fell early on Steinie Morrison, who had been in the restaurant and in Sidney Street at the same time as Beron. It would, in fact, not be an unlikely presumption that if Morrison went to Clapham it would be in the course of his profession, and if he induced Beron to go with him it would be because the old miser thought there was something to be got out of it more congenial to his nature than the cold night air or the company of Steinie Morrison. But that much was only conjecture. If Morrison was to be put on trial for his life, proof must be found to connect him with Beron's movements at the relevant hour on the night of the murder. It was not difficult to find witnesses to prove that Morrison had been in Beron's company and that they had left the restaurant together.

It was, however, more difficult to connect Morrison with the events on Clapham Common. There came forward on enquiry, however, three cabmen with news to tell of the fateful night. One of them said that he had driven two men from the East End to Lavender Hill, near Clapham Common; the second cabman, named Stephens, said that he had driven a man from Clapham Common to the Hanover Arms, near Kennington Church; and the third said that he had driven two men from the neighbourhood of Kennington Church to the Seven Sisters Road. All these cabmen picked out Steinie Morrison at identification parades as the fare

whom they had carried on that night. With this evidence to support them the police instituted proceedings and on March 6, 1911, Morrison came up on the capital charge before Mr. Justice Darling.

The trial lasted for over a week, and was characterised by many unusual features. Great efforts were made by Morrison and his advisers to prove an alibi and shake the witnesses for the prosecution. The witnesses called by Mr. Richard Muir, who prosecuted, and those called by Mr. Abinger, who defended, were for the most part Jews of foreign extraction from Whitechapel, with unpronounceable names, unintelligible methods of speaking, and a temperamental disinclination for telling the truth if anything else could be said. They were influenced in their evidence more by the strange feuds and loyalties of the curious outpost of Zion in which they lived than by anything so abstract as furthering the ends of English justice. So it was not an easy case to try. But Mr. Justice Darling set himself to hear it with patience and humanity, and did show a real understanding of the peculiar outlook and temperament of the class of people who were mainly concerned. Nor, as it was a murder trial, were there any judicial witticisms nor pleasantries, though in other circumstances some of the proceedings might have lent themselves to it. One of the characteristic difficulties was the eagerness of many of the witnesses to change or withdraw their evidence. Indeed, the only point on which they were consistent was the unanimous opinion that all the other witnesses were the most depraved liars.

Some of the facts in the case were incontrovertible. Thus it was beyond doubt that both Beron and Morrison had been in the restaurant in Sidney Street on the night of the murder. Nor was there any doubt that poor Beron's body had been found in the morning on Clapham Common full of wounds, some made with a blunt heavy instrument and others with a long knife. There were also two curious curved cuts on his cheeks. There was no doubt that the old miser had lost what must have been almost as dear to him as his life, his money and his precious gold watch and chain. But the remaining facts were in issue. The case for the prosecution was that Morrison and Beron had left Sidney Street together, picked up the first cab, and driven to Lavender Hill, where they had dismissed it and started to walk across the Common

at about 2.40 a.m. on New Year's Day. About ten minutes later the murder was committed and the body stripped of its possessions. Shortly after 3 a.m., Morrison had hailed Stephens's cab at Clapham Cross, and had been driven to the Hanover Arms. From there he had gone on with another man in a third cab down the Great West Road and so away from the scene of the murder. The motive for the murder, of course, was the robbery by Morrison of his friend.

The first answer to this, on the part of the defence, was an alibi which sought to show that Morrison had been in a music-hall, and not in the company of Beron on the night of the murder. The evidence of this was supplied by two sisters called Brodshky, who said that he had sat in the same row as themselves at the Shoreditch Empire. The prosecution were even more suspicious of this evidence than they would ordinarily have been, as one of the sisters had made a statement to the police at an earlier stage about Morrison's movements, and had made no mention of the music-hall. She had been allowed, perhaps through some oversight, to visit Morrison in Brixton Prison when he was awaiting trial, and maybe this artistic addition to her statement was not wholly unconnected with her visit. Fortunately their evidence was very easily discredited, for the prosecution got in touch with the manager of the Shoreditch Empire, who said that the sisters could not have sat in the stalls on that evening at a payment of less than 1s. 6d. and, in fact, there were no stalls available at the time when they said they were there, as people were actually standing. The girls had said that they had only paid 1s. for their seats. So much for that part of the alibi. Not much more satisfactory, though less easily discredited, was the evidence of Mr. and Mrs. Zimmerman, who said that Morrison came home at 12 o'clock on New Year's Eve, and was let in by them. He could not, according to them, have gone out again later because the front door was bolted and the bolt could not be drawn without screeching, which they would undoubtedly have heard.

The best efforts of the defence never really succeeded in getting the alibi on its feet. This was not, however, the end of the case, and Darling took care to point out, when he came to sum up, that the fact that a man who tried to bolster up his case by perjured evidence was not in itself proof that he was guilty. " Certain classes and certain nationalities, even if they have got a good case, are not

content to rest on that good case, because they are convinced that perjured evidence will be brought against them."

In Darling's view, the real crux of the case, after the breakdown of the alibi, was this : There could be very little doubt that the man picked up by the second cabman, Stephens, was the murderer ; but was it Morrison ? Was it beyond all possible doubt that it was he whom Stephens had picked up ? Stephens, like the other two cab drivers, had identified Morrison as their fare. But it was contended by the defence that the cabmen had not come forward immediately, and that the effect of the delay had been that they had had opportunities of seeing the photograph of Morrison in the newspapers as that of the accused man. This, in their submission, obliterated much of the effect and value of their identification. And certainly, apart altogether from any question as to the honesty of the cab-drivers—and there was no particular motive for them to be dishonest—the sight of the photograph in the newspapers might obviously stimulate the memory to believe that he was in fact the man. The identification took place a fortnight after the murder and any certainty in identification of a casual fare, even at an unusual hour must necessarily be unlikely at that distance of time. This weighed very heavily with Darling, especially as he himself was very short-sighted and knew that he could not have sworn to the identification of someone seen for a short time in an indifferent light.

There was another feature of the case which no doubt had its influence on the Jury, though not on the Judge. It is a principle of Criminal Law that evidence may not be given of a prisoner's character or previous convictions ; nor may he be cross-examined as to them. This rule is subject, however, to an exception in cases where counsel for the defence attacks the character of the prosecution's witnesses. In this case, Mr. Abinger cross-examined two of the prosecution's Jewish witnesses, called as to Morrison's movements on that night, as to their character. It was argued in the case of Joe Mintz—who was questioned as to an attempt at suicide, for the purpose of showing that he was of unsound mind—that this was not a question which properly went to character. Darling warned Mr. Abinger as to what the legal consequence of his tactics would be, but met with the reply that he was acting on the prisoner's instructions. The wisdom of such tactics was very doubtful indeed for, though no doubt the characters of some of the Whitechapel witnesses were

vulnerable enough, none were more vulnerable than that of Morrison himself. Morrison was a burglar by trade and an ex-convict, and the result of his counsel's attack on the witnesses for the prosecution was that these facts were put before the Court. Of course, the fact that a man has been convicted of burglary is no real reason why he should be more likely to commit murder ; and a Judge, whose mind is trained in these things, is able to discount the effect of it upon his mind. But it is very difficult for a Jury not to be affected by the knowledge that the man who is on trial is an habitual criminal.

Darling was aware of the prejudice that this might create, and his summing up was most careful, the more so since he himself did not consider the case to be proved beyond reasonable doubt. On the subject of the alibi he pointed out that, though the Jury might well come to the conclusion that the alibi was a false one, they should not judge it as strictly against the prisoner as they would have done if he were an Englishman, on account of the natural tendency of such people to anticipate by perjury the perjured evidence which they expect to be introduced against them. The breakdown of the alibi was not positive evidence of guilt.

After rehearsing the facts and analysing the evidence he went on in words which, though simple, deserve quotation as a lucid enunciation of a principle of English justice. " Even then he may not be proved guilty—he may be guilty, and never be proved guilty ; he may be guilty as a fact, and he may not be proved guilty. . . . Before you say he is guilty you must be convinced that the evidence can only be explained on the assumption that he is guilty. . . It is the characteristic of English justice that we do not seek to avenge a crime ; we do not seek upon the balance of probabilities to say ' Someone must be held responsible for this ' ; we only seek to find out by our methods, our strict rules and methods of evidence, whether the accused person is proved to be guilty, and if he is not proved to be guilty, there is only one verdict which an English Jury is permitted to give. If the case is proved, I know you have fortitude enough to act upon your conscientious judgment and say he is guilty ; but if you are not satisfied, you know your duty, and I am sure you will do it."

The reference to an English Jury is, of course, an allusion to the distinction between English and Scottish practice in this regard. Scotland has a verdict of non-proven, which has no parallel in English

Law. If such a finding had been permissible in English Law, Darling would have summed up for it in this case. In spite of this the Jury took only thirty-six minutes to find Morrison guilty. In sentencing him, Darling did not say that he concurred with the verdict of the Jury. He did say, however, that he was sure that the fact that Morrison's case was supported by evidence demonstrably false did not unduly weigh with the Jury, who had convicted him, upon the strength of the evidence for the prosecution, and upon that alone. He then added the formal phrase " May the Lord have mercy on your soul." To this Morrison, recalcitrant as ever, shouted out, " I decline such mercy ; I don't believe there is a God in Heaven either."

But he was to escape the gallows, for Mr. Winston Churchill, the Home Secretary, ordered his reprieve, and he suffered only penal servitude for life. The grounds given for this decision were that other evidence might turn up leading to his acquittal ; in other words there was reasonable doubt of the proof of his guilt. There were, in fact, various stories as to the real identity of the murderer. Thus Mrs. R., an English lady resident in Paris, came forward after the trial to say that she had overheard a conversation between two foreigners in a train in Paris, of which the effect was that a friend of theirs, Cort or some such name as that, had murdered Beron, but they had preferred to let Morrison suffer. How much, if anything, there was in this it is difficult to say, for the foreigners were never traced ; however, certain other names mentioned by the lady as having been used in the conversation were familiar to the police as the names of members of an international gang well known to them. It was also suggested that the curious cuts on the cheeks, bearing the pattern of the letter S, might be the marks of a secret society, in which case revenge rather than robbery would have been the motive for the murder. At all events, Morrison went to Parkhurst instead of to the gallows. As a prisoner he was notorious for the violence and intractability of his demeanour. He varied this with a touch of originality by petitioning no fewer than four times that the original sentence should be carried out. The long-suffering authorities failed to avail themselves of this invitation as a method of ridding themselves of an extremely tiresome prisoner, and so Morrison finally took the law into his own hands and starved himself to death in prison, in 1921.

I have seen it stated that it was Darling's representation that induced Mr. Winston Churchill to grant the reprieve. I did not understand from Lord Darling that he actually saw the Home Secretary in connection with the matter. What he did say to me was, "I have no doubt that the Home Secretary was influenced considerably in his decision to order a reprieve by the terms of my summing up." It is sometimes suggested that Steinie Morrison's was not the hand which struck down Beron; and it will be remembered that the third cabman had picked up two fares at Kennington. But if Morrison was present that night at Clapham Common he was an accessory certainly after the fact and almost certainly before it, and therefore, in English Law, guilty of murder. Darling had himself no doubt that Morrison had murdered Beron. What he did think was that the evidence of identification was in the nature of things not sufficiently cast-iron to act as the basis of proof on a capital charge. A quarter of a century after the trial he expressed it thus to me: "I had myself no doubt in my own mind that Morrison was guilty of murder. But the view I took was that, had I been a juryman, the evidence that I had heard was not sufficient to prove to me beyond all reasonable doubt that Morrison had committed murder. Therefore I summed up as I did."

Shortly before and shortly after the Morrison case, Darling was concerned as a member of the Court of Criminal Appeal with two other murder cases of equal notoriety. Towards the end of 1910 he was one of the Court of Criminal Appeal before whom Crippen's appeal against conviction for murder was heard. The facts of this case, which had resulted in the sentencing to death of Crippen by the Lord Chief Justice, are too familiar to require repetition here. There was little substance in the appeal, and upon giving the judgment of the Court, Darling dismissed the appeal without calling on the prosecution to reply. One of the points raised was directed to showing that the proceedings were invalid because one of the jurymen had been taken ill in the course of the trial and had in consequence been out of court for a short time. Darling's judgment took away from Crippen the hope of escaping justice on a technicality such as this.

In the year following the Morrison case Darling formed one of the Court of Criminal Appeal, with Mr. Justice Channell and Mr. Justice Coleridge, which heard the appeal of that singularly able and

unattractive murderer Frederick Henry Seddon. We are not concerned here with the facts of this case,* but only with Darling's judgment of them.

In the case of Morrison, Darling had had the duty of condemning to death a man whom he believed in fact to be guilty, but whom he thought should not in law be hanged. In the cases of Crippen and Seddon he had given judgments which had extinguished their last hopes from a Court of Law. (In Criminal cases there is no appeal to the House of Lords unless the Attorney-General gives his fiat that there is a point of sufficient legal importance involved to justify a hearing of the appeal before the House of Lords; in Morrison's case his advisers tried to obtain the Attorney-General's fiat for an appeal to the House of Lords, but this was refused by Sir Rufus Isaacs, later Lord Reading, at that time Attorney-General.)

People often wonder what are the feelings of Judges at the time of sentencing people to death. Lord Darling sentenced many people to death in his lifetime, reviewed many more such sentences in the Court of Criminal Appeal, and was of course present on many occasions on Circuit as Counsel when sentence of death was passed. I took occasion, therefore, to ask him what his feelings were in sentencing people to death. His reply was, "I was doing my duty; that is all. It is the duty of a Judge to carry out the obligations of his office by sentencing people to death when the Law and the verdict of their countrymen demand it. If people are too squeamish to carry out the duties of their office then they should not be Judges. There may be, and there sometimes are, considerations which affect the desirability of the death sentence being carried out. But these are not matters for the Judge in passing sentence. They are matters for the Home Secretary, and the Judge can rest assured that they will receive consideration from the proper quarters. He only has his duty to do." So it was, of course, in the Morrison case. Darling passed sentence of death because it was the duty of his office in the circumstances so to do, in spite of the fact that he did not think that the case was sufficiently proven against him. That, however, was a matter for the Home Secretary, and as a result of his consideration of the matter the death sentence was in fact not carried out.

* These facts are fully set out in *Lord Reading and his Cases; the Study of a Great Career*, by Derek Walker-Smith.

CHAPTER XV

THE SUFFRAGETTE CASE

THE case of Steinie Morrison touched very nearly the lives of a curious and isolated section of the population. It attracted enormous public interest, but that was on account of the mystery and circumstances which surrounded it and not on account of any real public importance which attached to it. The facts of the case might equally well have had their setting in any of those Eastern European countries from which most of the protagonists in the trial were so lately derived. But Darling did try, round about this time, several cases the facts of which impinged more closely on the national life.

In May, 1912, he tried the libel action which Mr. Winston Churchill, then First Lord of the Admiralty, one of the most powerful personalities of the Liberal Government, and a man with whom Darling enjoyed a long friendship, brought against *Blackwood's Magazine*. *Blackwood's* had revived the old canard which accused Mr. Churchill of effecting his escape from the Boers in the South African War by breaking the parole he had given them. *Blackwood's*, as became a magazine of its high repute, reproduced it in a rather more literary form than that in which it had appeared on previous occasions. A poem was published entitled: "A Lost Letter of Ancient Rome" with the object of satirising members of the Government. Churchill was represented as Claudius, and the relevant passage read:

> Claudius by nature is no slug
> Like Pompey: dagger, dungeon, drug
> All urge him on his wild career:
> He craves excitement far or near
> More fond of war-like words than blows,
> When captured by our Asian foes,
> How cleverly he homeward stole
> And broke his prison or parole.

Mr. Churchill brought an action for libel against the magazine, which did not defend it but repeated the apology they had already given. Mr. F. E. Smith, counsel for the plaintiff, described his client's dramatic escape from Pretoria, of which Mr. Churchill has since given a full account in his own writings. Mr. Douglas Hogg, who appeared with instructions to offer the defendants' apology, said that the Editor and Proprietor had been unaware that the lines contained any imputation on Mr. Churchill. On this Darling commented : " I know that very few people pay any attention to poetry nowadays, but I did not know that the Editor even does not read it." He then reminded the defendants that publication of libels on people in the public position of Mr. Churchill might be not only a civil but a criminal offence, in which case the Publishers would be before the Judges of that Court sitting in a slightly different capacity. The Record was then withdrawn.

The Liberal Government was not able to get rid of the Suffragette agitation as simply or as expeditiously as its First Lord got rid of *Blackwood's Magazine*. In the years immediately preceding the War the harassed and well-meaning democrats who constituted the Liberal Government were considerably embarrassed by the growing and reiterated demand for votes for women. It was not easy for Liberals, who are theorists, to give any satisfactory logical reason why the principle of government of the people by the people for the people should be so interpreted as to exclude rather more than half the people. But difficulties of logic and inconsistency indirectly came to the aid of the Liberal Government as they so often do. For, by steadily resisting the demands of the Suffragettes without being able to convince them that they were justified in so doing, the Government so exacerbated their feelings as to strengthen the appeal of the apostles of violence within that movement. It was then, of course, open to the Government to point out that the demands of the Suffragettes were supported by violence, and to proclaim grandiosely that no democratic government could yield to such methods. An old trick, but one that is almost invariably successful.

In the case of the Suffragettes it worked fairly well, and there was considerable indulgence in demonstrations of violence such as window-breaking, obstruction and the like. It was not very effective, but it did get to such a pitch that, convenient as it might be in the long run for the Liberal Government, it became most incon-

venient and expensive for property owners. The difficulty that the property owners were in was that it might very well be that the individual Militant Suffragettes who performed the acts of damage might not be worth suing. Unless they could make the Funds of the Women's Social and Political Unions—the Suffragette organisation—responsible, they might easily whistle for any damages which might be awarded. When, therefore, Messrs Robinson & Cleaver and various other large shops suffered extensive damage through the breaking of their windows, they brought an action for conspiracy against Mr. and Mrs. Pethick Lawrence, Mrs. Pankhurst, and the Women's Social and Political Union whom Miss Mabel Tuke was named to represent for the purposes of the action.

This important case was heard by Darling in the beginning of June, 1913. The plaintiffs were represented by Mr. Tindal Atkinson, K.C. and Mr. Charles, later a Judge of the High Court. Mr. George Wallace, K.C., and Mr. Blanco White appeared for the Union, and Mr. and Mrs. Pethick Lawrence relied on their own eloquence and their own resources. Mrs. Pankhurst put in no defence. The case attracted great popular attention, which did not abate during the three days of its hearing, for it was concerned with one of the most vital and most widely advertised political issues of the day. The plaintiffs called evidence to show that the Pethick Lawrences and Pankhursts were responsible for a paper called *Votes For Women*, the organ of the Women's Social and Political Union, through which they had incited and organised violence which had culminated in the window breaking of March 1. On that date over 200 women had been arrested for breaking windows, and they were bailed out by Mr. Pethick Lawrence and the solicitor to the Union. The income of the Union was £23,000 a year and its funds should be liable. The answer of the defence to this was that at any rate those members who had joined since the date of the window-breaking, of whom there were over 2,000, could surely not be held responsible. Further, the members as a whole were not responsible for a conspiracy organised by a few people and of which they had no knowledge. There was no question but that they had acted under the instigation of some of the leaders of the Union. As Mr. Wallace said : " I am not going to ask the Jury to say there was no conspiracy ; I am not going to be so impertinent as to say that on a certain date these windows were broken by the

interposition of Providence." At this Darling reminded him that the old form of indictment alleged that these things were done at the instigation of the devil.

Darling had various dialogues with ladies called for the defence, and revealed in them a degree of feminine illogicality which was not the best advertisement for their cause. Thus there was Lady Sybil Smith who said she was a Tolstoyan :

DARLING : Would Tolstoy have objected to the destruction of the Houses of Parliament ?

LADY SYBIL : The cost of the Houses of Parliament would be spread over so many people that it would not be felt by anyone. It is a question of degree.

DARLING : But each individual would be injured to the extent of his share ?

LADY SYBIL : Yes.

DARLING : Then it comes to this, that you may hurt an individual, but you must not hurt him much.

Then there was Miss Sophia Strangways, daughter of the Attorney-General of South Australia, who was asked by Darling why she adopted Suffragist opinions. She replied : " Some of my friends were sent to prison for standing at the corner of a square."

" I see," said Darling, " because your friends were sent to prison you thought women ought to have votes."

A Mrs. Aldridge, who said that she approved of the setting fire to a house by a Suffragette if she justified her conduct to herself, was asked by Darling if that was her criterion of behaviour.

The rather ragged effect of this evidence was then fortified by Mrs. Pethick Lawrence in an impassioned political harangue which she addressed to the Jury in her own defence :

" I have no object other than a political one. I want the Jury to realise that the women who go out to break these windows go to prison for it, lose their friends, are boycotted socially, and lose their health, are actuated not by a sense of their own grievances, but of those of others. Their action is directly due to the failure of the Government to recognise the most elementary principle of constitutional liberty. . . The holes in these broken windows are mouths calling attention to the wrongs of hundreds and thousands of wives and mothers. When a tide is dammed back it overflows. Men do not argue with the flood nor put responsibility upon it, but

those who dammed back the stream. I appeal for understanding. Will you not see behind those broken windows the broken lives of women ? "

Darling fully appreciated this speech as a speech and referred to it as a " most eloquent one ; really one of the most eloquent I have ever heard in this Court. But it was a political one and I don't know whether it has been delivered before. In this case it is not enough to prove conspiracy : the plaintiffs must show a conspiracy to commit damage which has actually been committed. No one has suggested that those who broke the windows are not liable but, if it can be shown that the Women's Social and Political Union have conspired and incited them to do so, the Union becomes liable for the damage suffered. As for militancy, not only did they get up great constitutional meetings but they broke all records. If only they had stopped there—but they broke windows as well. And why ? In Mrs. Pethick Lawrence's own words, that the holes in the windows might become mouths. That might be the object with which the windows were broken ; but it does not prove that it was right to break them. No one can help sympathising with a great deal of Mrs. Pethick Lawrence's speech, but I cannot possibly direct you that the ends pursued by her were so good that they justify the means."

This was a tolerably clear direction to the jury to find for the plaintiff, which they did after a retirement of three-quarters of an hour. Darling ruled, however, that no liability attached to the members who had joined the Unions after the date of the breaking of the windows. In his summing up he had been deliberately careful not to express an opinion on the question of Women's Suffrage at large. As an individual, of course, he did not favour it, and had he still been a politician he would no doubt have actively opposed it. But from the Bench he gave expression to no personal point of view on the matter. He did, however, comment on the Tolstoyan point of view put forward by some of the witnesses who urged that there were as many moral codes as there were individuals. Such theories, in his view, could end only in anarchy and nihilism. He quoted Rabelais to the jury : " Ainsi l'avoit établi Gargantue. A leur règle n'etait que cette clause, ' Fay ce que vouldras,' parce que gens libres, bien nays, bien instruicts, conversants en compagnies honnestes ont par nature instinct, et aiguillon, qui toujours les poulse de faict vertueux, et retive de vice ; lequel ils nommorent Honneur."

(Gargantua had established it on this basis. Their law was summed up in the one phrase: "Do what you will," because free people, well born, well taught, mixing in worthy company have by nature an instinct and an urge that always prompts them towards virtue and restrains them from vice; this they call honour.)

In Darling's view such a state was only a vision and likely to remain so. Women have now had the vote for many years but the Rabelaisian conception of society is as visionary and far off as before.

The Suffragette case was fought in the shadow of political controversy. Another case tried by Darling in the same year was cast in the longer shadow of the greater conflict which was impending. This was the prosecution of George Parrot, a Warrant Officer in the Navy, under the recently passed Official Secrets Act of 1911. The charge against him was one of communicating confidential information in respect of armaments and of movements of British ships to persons not entitled thereto. The persons not entitled thereto were, in this case, the agents of the German Government.

It happened this way. Parrot, a man of forty, was in charge of the Rifle Range at Sheerness. On July 11 he applied for fourteen days' leave to go to Devonport. This was granted, but as the leakage of certain information had given rise to suspicions, the authorities took the precaution of having him watched. They found that on the day he applied for leave he sent a telegram from Sittingbourne to Richard Dinger at Berlin saying: "Coming eight o'clock Saturday, Seymour." Two days later he travelled by train from Sheerness to Sittingbourne and then on to Dover. At Dover he was stopped by a detective inspector before he could go on board the steamer. He was not in uniform and said that he was a civilian. He was searched, however, and a torn piece of paper was found on him with writing on it arranging a meeting and the name, "Richard Dinger." He said that this was the nom-de-plume of a lady friend he was going to meet at Ostend without his wife knowing.

The detective appeared to accept this explanation and Parrot was allowed to go on board. Unknown to him, however, a careful watch was kept. When the boat arrived at Ostend he met no woman. Instead, a man came sidling up to him, and they went off to the sea-front together without any greeting. There they remained in deep conversation for about two hours. Parrot then returned to Sheerness, where he was told that he had broken the King's Regula-

tions by going abroad. An official investigation was held and he was dismissed the Service. After this he was carefully watched and was observed to go abroad twice, once to Hamburg and once to Rotterdam. He had, too, an accommodation address under the name of Couch at a tobacconist's, where letters reached him. One of these was opened and was found to contain a request for information in respect of certain ships, instructions to go to the Firth of Forth to watch manœuvres, and two £5 notes for expenses. The letter was signed " Richard." His house was searched and there were found there a number of banknotes which had been in circulation in Germany.

When brought up on this charge before Darling at the Old Bailey, Parrot gave an explanation of his conduct more romantic than convincing. He said that in the summer of 1912 he had got into conversation with a woman sitting next to him at the Palace Music-Hall. A quarter-deck scene was in progress and she had asked him whether he was a sailor. They had had supper together and she had said that she was shortly going abroad : would he go over and meet her in Ostend ? She had given him a piece of paper containing the address which would find her, and he had told her that his name was Seymour. When he went to Ostend he went to meet her, after first telegraphing to the address she had given him. At Ostend a man had met him, asked him if he was Seymour, and said that he had come instead of the lady. They had then gone together to the front where they talked, but there had been no communication of naval information. At the beginning of October he had received a letter from the man asking him to do some articles on naval matters for a paper. He had done so, but all the information he had provided was open to the public. The visits to Hamburg and Rotterdam he had made to see if he could get the man and the lady to come over and give evidence on his behalf with a view to procuring his reinstatement in the Service. In this he had been unsuccessful. As for the banknotes, these had probably come from a German family called Hentschell to whom he had lent £60 when they had been living near Sheerness, which they were now repaying. He had no intention of going to the Firth of Forth.

He was cross-examined on this story in great detail by the Solicitor-General. From the cross-examination it emerged that he had confidential information ; that the people with whom he had

been dealing were foreigners ; that these foreigners were trying to get information from him ; that he had used two false names and told lies at the official investigation ; that he had destroyed all the papers relating to his dealings with these foreigners, although if his story were true he would have kept them to prove his innocence.

After this cross-examination the Jury scarcely required the direction of the Judge to help them to their decision ; and perhaps the most interesting part of Darling's summing up was the expression of a personal opinion. " It is common knowledge," he said, " that there is no nation in Europe which does not want to know a great deal about other nations which those nations do not want to communicate. Our Government—perhaps rather late in the day, because as a nation we are never to my way of thinking as intelligent on some matters as other nations, nor react so soon—decided in August, 1911, to strengthen the Law in this respect. The very names that have been mentioned in this case—names of places in the North Sea that the prisoner visited, must bring back to your minds Nelson and the renown of the Navy of his day. . . It is sad to think that any Englishman should have fallen to such a position as it is suggested was occupied by the prisoner here. But it is useless having false pride and refusing to face facts. If you think he did so fall, then it is your duty to convict."

The Jury did so think, and found him guilty. Darling could have sentenced him to seven years' penal servitude. Actually, in view of his previous good record and because he thought that he had been entrapped by a woman acting as agent in an ingenious plot, he sentenced him only to four years, although " it was an offence against every man, woman and child in the whole Empire." He threw out a hint to Parrot that the only hope he had of remission of that sentence was to tell the authorities all that he knew, the information which he had communicated, and the persons to whom he had given it, so that they could guard against the danger which he had brought to the country. It does not appear that Parrot took Darling's advice, for he appealed against his conviction unsuccessfully, but not against his sentence ; and there was no mention of its reduction.

So ended the Parrot case. But events were very soon to illustrate the wisdom of Darling's strictures on the national tardiness in matters of defensive precaution.

CHAPTER XVI

LORD ALFRED DOUGLAS AND MR. ROBERT SIEVIER

IN the brave old days before the War, when people were less inclined to count the cost of their actions, and when the more leisured lives they led gave more opportunities for friction within the social system, there were two or three doughty litigants who were the hardy annuals of the Law Courts. They numbered some men of interesting history and striking personality. There was Bottomley, for instance, of whose activities we have already mentioned something; but in Bottomley's case much of the litigation in which he was involved was imposed upon him by the curious workings of his financial undertakings. The real enthusiastic litigant is concerned more with cases of defamation, either as a plaintiff seeking to vindicate his character by the recovery of damages, or as a defendant to an action brought against him on account of his outspoken comments on the conduct of others. Two of the foremost representatives of this colourful type of litigant were Lord Alfred Douglas and Mr. Robert Sievier. In 1913 it fell to the lot of Mr. Justice Darling to try cases in which both were concerned.

In 1913 Lord Alfred Douglas was a man of over forty, but he was still associated in the public mind with the events of the Oscar Wilde trial of nearly twenty years before. Son of the Marquis of Queensberry, scion of an ancient Scottish House, he had also been a young man of great physical beauty, of considerable poetic talent, and not without athletic distinction as a horseman and a runner. By the curious irony which Fortune loves to visit upon those who seem to be her prime favourites, the life of this gifted youth—born in spacious days when the combination of his hereditary advantages and great gifts should have assured it being spent in pleasant pastures—was destined to follow a path of all too frequent bitterness

and controversy. And the reason for this was, in the beginning, his friendship with Oscar Wilde, another of Fortune's favourites whom she exalted only to make his downfall the more startling and the more tragic.

Lord Alfred Douglas once described the life and fall of Wilde as "the greatest romantic tragedy of our age." Certainly it was one under which the shadow of his life was to be passed, and the libel action of *Douglas* v. *Ransome* which was tried by Mr. Justice Darling in April, 1913, was concerned with his friendship for the dead poet.

Like everybody else in London, Darling had, of course, been immensely interested in the great prosecution of Lord Queensberry for criminal libel on Wilde in 1895, one of the most sensational trials that has ever taken place in the English Courts. Darling, indeed, had a personal interest in the case and a great insight into it as Carson, who was Lord Queensberry's leading Counsel, was a close friend of his and at that time in Chambers with him in Dr. Johnson's Buildings. Darling was not an admirer of Wilde's literary gifts, nor was the sparkle of Wilde's wit of a vintage particularly to his taste. While he did not admire him as an artist, he was horrified by the revelations concerning him as a man, for Darling in this as in all else was, despite his eclectic wit and apparent sophistication, fundamentally a Puritan whose simple standards of morality must be satisfied before he would allow of saving graces.

The Wilde case, which had interested Darling only as an observer and as a friend of Carson's, had touched Lord Alfred far more nearly. Before the case he had been celebrated and sought after; after the case he was associated in men's minds with an æsthete whom everybody discovered they had disapproved of, now that he was convicted of homosexual practices. But it was not only Douglas's friendship with Wilde which counted against him at that time. It was widely said that he, who had delighted in the friendship of the great man in the hour of his triumph, had deserted and betrayed him at the time of his fall. Douglas was out of the country at the time of the case, and had not been called as a witness. This was not, in fact, due to his own desire, for he was anxious to come and give evidence on behalf of his friend. But it was considered by Wilde's advisers that Douglas's testimony was not likely to be helpful, and of course they could not tell at that time that the

effeminate-looking boy would turn out to be a redoubtable opponent in the witness box for even the most formidable of cross-examiners. At all events he had not been there, and Wilde had fallen. So he had to bear not only the stigma of friendship with Wilde; in the circle of friends who were loyal to Oscar Wilde in the dark days of his imprisonment Douglas was branded with the more disgraceful imputation of betrayal and cowardly ingratitude.

Wilde himself, while retaining his affection for Douglas, to some extent shared the view of Frank Harris, Robert Ross and the others of the Wilde circle, who took the view that Douglas had first been responsible for Wilde's downfall and then had deserted him on account of it. It is not necessary here to go into the various misunderstandings which led Wilde to take that view. The result was the famous *De Profundis* manuscript, which took the form of a letter addressed to Douglas, starting " Dear Bosie "—Bosie was the nickname given to Alfred Douglas by his mother in childhood—and was sent to Ross for communication to Douglas. In fact it reached Ross but never reached Douglas. It contained a good deal of vilification of the latter on the part of Wilde, who was at the time suffering from self-pity and was under the impression that Douglas had deserted him. Nevertheless, when Wilde came out of prison he spent a good deal of time with Douglas and stayed with him in his villa in the South of Italy.

Wilde died in 1900, leaving behind him not only the heritage of his literature but a long legacy of bitterness and litigation amongst those who had known him. It was one of these cases which Darling had to try, in 1913. It was not, in fact, the first time he had had Lord Alfred Douglas before him in Court. A short time previously Douglas had appeared in the capacity of witness. This was in a case brought by the proprietors of the *Academy* against a Non-conformist Minister who had accused the paper of having Romish tendencies. As editor, Douglas had given evidence, as had the irrepressible Crosland. Both had been cross-examined by Carson, and Crosland had caused considerable amusement by saying in reply to a question: " It is no good asking me about ritual; I am a Methodist." In fact he was the son of a Methodist Minister. The case was fought out with great good humour on all sides; Darling was in very good form and was very courteous to Douglas. The Jury brought in a verdict for the defendant, adding a rider that he

should be more careful. With this and with Darling's conduct of the case Douglas was entirely satisfied; it was unfortunately the last and only time that he saw eye to eye with Mr. Justice Darling in a Court of Law.

The case of *Douglas* v. *Ransome* rose out of a biography of Wilde written by Mr. Ransome, now a journalist and writer of distinction, but at that time a beginner in the field of literature. He was attracted by the obvious biographical possibilities in the life of Wilde and wrote his book under the title *Oscar Wilde, a Critical Study*. In dealing with the *De Profundis* episode he wrote: "The letter was addressed not to Mr. Ross, but to a man to whom Wilde felt that he owed some at least of the circumstances of his public disgrace. . . . The iterated entreaty of a man whose friendship had already cost him more than it was worth . . . destroyed his resolution. . . . His friend, as soon as there was no money, left him. 'It was,' said Wilde, 'a most bitter experience in a bitter life.'"

The passage was not considerable, and Douglas was not, in fact, referred to by name. But there could be no doubt that the words referred to him, and that if untrue they were defamatory. Douglas therefore brought an action for libel against Mr. Ransome, and against the Times Book Club, which had circulated the book. The passage was small and might without injury to the book have been taken out; but it was represented to Mr. Ransome that he might successfully defend the action, and consequently he put in a plea of justification, *i.e.* a defence that the words were true in substance and in fact. The Times Book Club also put in a defence denying negligence in circulation and the case proceeded to trial before Mr. Justice Darling.

The case attracted great public interest both because of the celebrity that attached to the name of Lord Alfred Douglas and to the great interest which the public have always taken in any echo of the Wilde scandal. Douglas was represented in Court by Cecil Hayes, who had only been called to the Bar just over two years, while Ransome had a Silk in the person of Mr. J. H. Campbell, K.C. Now the libel which Douglas complained of was the suggestion that Wilde had owed his disgrace and infamy to him, and that when he came out of prison he had consorted with him only so long as Wilde had any money. In short, the gravamen of the

charge against Douglas which had to be justified if the words were shown to be true was that, after being the cause of Wilde's downfall, he deserted him when it was no longer materially worth his while to be friendly with him. For various reasons the second issue was to some extent lost sight of. For one thing, Mr. Campbell, like all leading Counsel who from time to time had to cross-examine Lord Alfred, preferred to rely on some of the early writings of Lord Alfred and early letters written by Wilde to him in the 90s as tending to show that Douglas had immoral tendencies. Mr. Hayes was not able to get the case out of this atmosphere, and consequently the issue almost seemed to be, not: Did Douglas desert Wilde? but: Had Douglas been addicted to the same practices as Wilde?

Douglas had, in fact, a fairly strong case. It was that so far from deserting Wilde he had stuck to him after he came out of prison, sent money to enable him to go to Naples, taken him to live at his villa there, and had only left him on the entreaty of his mother. When he did so leave Wilde he gave him £200. During 1900 Douglas's bank book showed that he had paid the other £380 by cheque, and he had given him considerably more in cash. As to the contention that he had ruined Wilde, that was absurd. He had first met Wilde when he was an undergraduate of twenty-one, whereas Wilde was already thirty-eight and an experienced man of the world.

Mr. Campbell's tactics were to read extracts from early writings of Douglas and to cross-examine him on these, and also to confront him with extracts from the unpublished portion of *De Profundis*, in which Wilde accused him of greed, shallowness and so on. Of this Darling, never an admirer of Wilde, remarked that it was obviously intended for publication, as Wilde had given himself the *beau rôle* all the time. *De Profundis* was some eighty pages long and the reading of it gave rise to considerable dispute. Hayes first objected to its being read, but Darling ruled that on the pleading it could not be shut out. Campbell said that it would only be necessary for parts of it to be read, but Mr. Hayes said that it must all be read so as to show that Wilde was subject to sudden and violent changes of mood. It was then read at great length and, in the course of the reading, Douglas asked if he might leave the witness box. Darling asked him if he was unwell, and, on being told that he was not, said that he must stay in the box, but allowed him to sit.

After the first sixteen pages had been read Darling said he did not think it was necessary to read the whole, and Mr. Campbell concurred. But Hayes again insisted that the whole ought to be read. "Very well," said Darling. "Of course it is your right. I looked ahead a little and it seemed to be just the same as the rest—very dead water indeed."

The next day the reading was resumed, but Darling noticed that the plaintiff was not in the witness box. He asked whether he was in Court, and on being told that he was not, sent for him, saying: "The very object of this reading is that he may be cross-examined on it." The Court waited for five minutes and then Darling directed the reading to be resumed, saying that he would deal with the plaintiff on his return. After a further ten minutes Douglas returned, and the following dialogue took place:

DARLING: Lord Alfred Douglas, was it upon your instructions that your Counsel asked that the whole of this should be read?

DOUGLAS: Yes.

DARLING: Then why did you absent yourself?

DOUGLAS: I wanted to go out as I did not want to hear it read. I understood your Lordship had said you did not wonder I wanted to go out.

DARLING: I said I did not wonder you wanted to sit down. You are plaintiff in this case, and if you leave the Court again while you are a witness I will give leave for judgment to be entered against you.

The reading was resumed, but after a while the Jury said that they had heard enough, thereby perhaps concurring in Darling's opinion of what some consider to be a literary masterpiece. Douglas was then cross-examined at some length on letters which he had written to Wilde. Douglas on one occasion complained of interruption by Mr. Campbell, saying: "You must allow me to finish my answer if you wish to get the truth; but perhaps you do not wish it."

DARLING: Don't be impertinent to learned Counsel.

DOUGLAS: I accept your Lordship's rebuke.

DARLING: You will not only accept my rebuke, but you will act upon it.

Mr. Campbell then addressed the Court on behalf of Ransome, saying that, in the tragedy of Wilde, Douglas had got off scot free

while Wilde had borne disgrace and punishment, in spite of the fact that the whole affair had risen from Douglas's hatred of his father, which had led him to induce Wilde to prosecute him. Mr. Hayes in reply contended that it was ridiculous to talk of the plaintiff leading Wilde astray. As for his poems, "Poets dealt with these matters in an extravagant strain." In support of this contention he recited a poem by Swinburne and the famous twentieth Sonnet of Shakespeare.

DARLING: Do you mean the Jury to infer that Shakespeare was guilty of the same practices as Wilde?

HAYES: Certainly not. I meant that Shakespeare's sonnets were perfectly innocent, and anyone is at liberty to write sonnets of the same kind without any meaning being attributed to them.

In the course of his summing up to the Jury Darling said that the young girl test sometimes used by public libraries was erroneous. "It is ridiculous to say that nobody should look at or read works of art, or write about artists because the artists' lives are bad. There was Benvenuto Cellini, who got absolution for murder and for future crimes from the Pope, in return for the gift of a brooch. That, however, is no reason for not studying the works of Cellini." Cellini was, as a matter of fact, a favourite illustration of Darling, which he used again a few years later in a controversy he had with the Jesuits in the columns of *The Times*.

Darling referred to the unpublished manuscript of *De Profundis* and said that the plaintiff could not complain of its having been read or of his letters having been read because it was due to the fact of his bringing this action. Nobody would dream of taking all Wilde wrote literally; but it does not follow that it was all false. On the whole, his summing up went rather against Douglas, for he read a letter written by Douglas to Wilde, not when he was a boy but when he was twenty-seven. "Lord Alfred Douglas had unique advantages, but instead of serving his country he was writing letters like that—about a conversation which a decent pagan of the time of Pericles would not have referred to."*

Like most libel cases, however, the verdict was pre-eminently one for the Jury, who were nearly two hours in making up their minds. When they returned they found a verdict for the defendants,

* The letter in question was intended as a joke, and described by Mr. Bernard Shaw as "harmless Victorian japes," but Darling regarded it seriously.

on the grounds that Ransome had justified his words. Actually, to the issue of his desertion of Wilde, Douglas had a very good answer in the letters written by Wilde to him during the period referred to. These letters were in Douglas's possession, had not been published, and were of course not known to Mr. Ransome. Nor were they brought before the Court, for they were couched in affectionate language, and Douglas, who had suffered so much from the earlier letters written by Wilde to him, was not anxious to divulge these of his own accord. If he had done so they must have made an impression both on Darling and on the Jury on the issue of desertion, for at the very time that it was alleged that he had deserted Wilde, the latter was writing these affectionate letters containing phrases such as " The only hope I have of doing anything beautiful in art again is to be with you." Douglas did not produce these letters, and the verdict went against him.

The effect of the verdict, as Mr. Ransome had pleaded justification, was apparently to establish the fact that Lord Alfred deserted his friend when fortune ceased to favour him. That he did not so desert him has become abundantly plain since, though of course it could not be known to Mr. Ransome at the time, the more so as he was in entire ignorance of the letters written by Wilde to Lord Alfred. The fact that these letters were not before the court, coupled with the inability of the plaintiff's counsel to impress upon the Jury that the issue really was one of the plaintiff's alleged desertion of Wilde, caused the verdict to come as it did. It is possible that Darling's summing up might have insisted more strongly on this point to the Jury, but he, too, was ignorant of the contents of the letters, which Lord Alfred had not produced.

The Ransome case was, as it turned out, only the first of a series of cases which to some extent depended on the same facts. Lord Alfred had some ten years' comparatively brisk litigation, in which he succeeded in establishing his point of view ; but these cases were not tried by Darling and have no proper place in this book. It remains to be said that Lord Alfred—who knew that much of the matter for the defence was supplied by Mr. Robert Ross, whom he did not believe to have a *bona fide* belief in his desertion of Wilde—thought that Darling must also recognise the hand of Ross. In fact, he did not and there was no reason why he should, as Mr. Ross was not a party to the action. The other party to the

action was Mr. Ransome, who believed in the truth of what he had asserted ; and as he had not access to Wilde's letters, it was perhaps not unnatural for him to take that view.

Douglas considered that he had been badly treated by Darling in the course of the trial. In point of fact Darling was right to insist on his presence in the witness-box during the necessary and tedious reading of *De Profundis*, for it was not evidence of the truth of what it contained but only material for cross-examination. Again, Douglas could hardly be surprised at Darling's attitude on the issue of desertion, as he did not choose to produce the letters from Wilde which would have been the best refutation. Before the trial Hayes, who was afraid of Douglas's excitable temperament in a Court of Law, had exacted a promise from him that on no account would he involve himself in a scene with the Judge. As we have seen, he came very near to it, but succeeded in honouring his promise to his counsel. It meant, however, a certain amount of suppressed irritation, which was not eased by the verdict. So, after the trial was over Douglas sat down and wrote a letter to Darling, saying : " If ever I come before you again I shall not then allow you to treat me as you have done now." Darling took little notice of it at the time, but circumstances were to recall it to his mind in dramatic fashion before many years had passed.

The case of *Douglas* v. *Ransome* was not particularly to Darling's liking. Judges do not, of course, differentiate in their treatment of cases, but inevitably some subject matter is less attractive than other. He was not an admirer of Wilde's literary style of which he had to listen to a variety of examples in the course of the case ; nor did he find any pleasure in the sort of subject matter which was the basis of the case. Nor, for that matter, did he, any more than another man, care for having to reprimand witnesses or feel their hostility. Considerably more to his liking was the case of *Wootton* v. *Sievier*, where the subject matter was horses and the Turf.

Mr. Robert Sievier, universally known as Bob Sievier, was a great figure in that curious pre-war world which was not quite the world of the Turf, nor the Society world, nor the Bohemian world, but contained elements of all three. Like Frank Harris, another but more literary inhabitant of the same world, Sievier was a man of romantic career and versatile talent ; he was a horseman of note and an acute judge of horse-flesh, a vigorous writer in a popular

polemical style, a fighter, a cheerful and amusing companion, and an apostle and connoisseur of good living. Above all he was, again like Frank Harris, gifted with immense vitality, so that at the time of writing he is reported to be embarked upon a new career, as an octogenarian, in the brave new world of Hollywood.

At the beginning of the century this versatile figure was not only familiar to all on the Turf but was gaining an increasing repute in the field of popular journalism. He had a paper called the *Winning Post*, which dealt with matters of interest on the Turf and of life in general in a breezy sort of way. One of the main attractions of this journal was a weekly candid commentary on distinguished personalities of the day under the intriguing title " Celebrities in Glass Houses." One of the early celebrities picked out was Mr. Justice Darling himself, who figured as Mr. Sievier's celebrity of the week on February 16, 1907. In the course of this he wrote : " No wonder you laugh, my Lord, as you preside over the motley crowds of litigants and lawyers, and realise more fully every day what a farce it all is. We will do you the justice to admit that you really do say funny things sometimes, and therein differ very considerably from one or two other ornaments of the profession, whose would-be witticisms would usually pass unnoticed but for the obvious amusement of their authors."

The article was, on the whole—and especially judged by the standards of the *Winning Post*—complimentary to Mr. Justice Darling. But the style of the passage quoted serves to show that Mr. Sievier was no respecter of persons, and his paper had a breezy and familiar way of treating celebrities. In the article on Mr. Justice Darling one sentence read : " There is, however, even a greater ass than the Law itself, and that is the man who has recourse to it when he can by any possible means avoid doing so." In spite of this Mr. Sievier was a pretty frequent litigant ; or perhaps it was that he exhausted unsuccessfully all possible means of avoiding participation in the legal comedy. Be that as it may, he was, in 1904, engaged as a defendant in a libel action against Sir James Duke, and in 1907 was prosecuted for blackmail by Mr. J. B. Joel. On this charge he was triumphantly acquitted, amid scenes of almost unexampled enthusiasm amongst the enormous crowd of his well-wishers who were gathered outside the Old Bailey and thronged the street all the way from Ludgate Circus to the Strand. And now, in 1913, he again

found himself engaged in litigation, this time as a defendant in a libel action brought by Mr. Wootton, the famous racehorse trainer.

It was the *Winning Post* which caused the trouble, for in it Sievier accused Wootton of ordering his jockeys to pull his horses, when he had not backed them, so as to enable him to make substantial sums on horses from other stables which he had backed. It was, of course, an extremely serious charge to bring against a trainer entrusted with the horses of several of the leading owners of the day, and Wootton, who was a rich man, had a very strong team to present his case, consisting of Mr. F. E. Smith, K.C., Mr. Bankes, K.C., subsequently Lord Justice Bankes, and Mr. McCardie, well known for his sixteen years' tenure of judicial office. Against this formidable array of legal talent Sievier elected to appear in person, though Mr. Marshall Hall, K.C., led two juniors for the *Winning Post* and its publishers, who were also sued.

The case was heard by Mr. Justice Darling in July, and the hearing occupied eight days. It was the sort of trial in which all the world and his stable-boy gave evidence ; great names succeeded each other in the witness-box with the monotony of a page out of Debrett. All the concomitants of a really popular *cause célèbre* were here. The plaintiff was a famous trainer ; his sons, well-known jockeys, were to give evidence ; the defendant was a leading personality of the Turf who infused his breezy vigour into the conduct of his case as well as into his article in the *Winning Post ;* the Hon. George Lambton and Lord Derby gave evidence for the plaintiff ; Sievier countered these princely pieces with Lord Durham and Lord Lonsdale ; there was a brilliant and fashionable team of counsel opposed by Sievier in person, a sporting position which, as in Bottomley's cases, had a strong appeal to the regulars who follow the Courts of Law. Only one thing more was necessary to complete the equipment of a *cause célèbre*, and that was that it should be tried by the right judge ; to the great joy of all those who appreciated artistic completeness the case was duly listed before Mr. Justice Darling, in K.B.4.

The defence justified the charges of which Wootton complained, and pleaded that the comment in the *Winning Post* was fair comment on a matter of public interest. As is the custom in libel cases the defence had to supply particulars of the facts relied upon in support of the plea of justification. These particulars are

given before the actual hearing of the case, and the defence are restricted to the particulars which they have given and which have been allowed by the Master in Chambers. The course of the case is, therefore, laid down before it actually starts, and it is ignorance of this fact that often makes it difficult for the lay public fully to understand cases, even when they are present at the hearing. In *Wootton* v. *Sievier* particulars were given of the numerous occasions on which it was alleged that Wootton had ordered his horses to be pulled when he had betted heavily on other horses; it was also alleged that he had been one of a ring of trainers who had pulled their jockeys and arranged their wins; that these trainers, instead of managing competitive establishments had in fact formed one large amalgamated establishment. Another allegation was that Wootton had run horses which he knew to be unfit in order to deceive the handicapper, subsequently making large sums by betting on them.

The investigation of these charges took considerable time, the more so as Sievier was appearing in person, but the public interest, so far from flagging, grew in intensity, and each day there were crowds to see Mr. Wootton arriving at the front entrance of the Court in his bowler hat and Mr. Sievier in his top hat, and Mr. Justice Darling arriving in his top hat at the Judges' entrance.

In his evidence-in-chief Wootton denied all the various suggestions contained in the defence's particulars of justification. Sievier, of course, had to conduct his own cross-examination of Wootton, helped out from time to time on technical points by the Judge, as is right for a Judge to do when a litigant is conducting his case in person. Darling was always helpful and generous to litigants in person, and was inclined to give them a good deal of latitude so that they would not be unduly handicapped by their ignorance of procedure and the rules of evidence. On a subsequent occasion, the famous Pemberton-Billing trial, he was criticised for giving too much latitude. But where less acute and less able litigants than the Independent Member for Mid-Herts were concerned, his treatment was justified, and he was kindly and generous to those who needed it. That this trait in him was recognised and appreciated is pleasantly shown by the case of the old lady who was found by an attendant in the corridor of the Law Courts at 4.15 one day; on being asked what she wanted she replied that she under-

stood that Mr. Justice Darling always gave free legal advice after four o'clock.

Sievier's cross-examination of Wootton was not carried out in a strictly professional manner. It was, in fact, punctuated by a good deal of back-chat between the parties, so that Darling had to intervene from time to time. His interventions, however, though firm, were always patient and good-humoured, with the result that the parties themselves remained good-humoured and justice was done. On the first day of the trial Wootton admitted that his education had been very bad. On the second day, in commenting on some of Wootton's replies, Sievier said : " I see you have been to a night school since yesterday."

DARLING : You must not be rude, Mr. Sievier.

SIEVIER : I apologise to you, Mr. Wootton, at once. I can't do more than apologise ; I can't withdraw from the case.

When the laughter died down, Wootton was asked if he knew a Mr. Skoyen and said that he did, adding to Sievier, " You ought to know him ; do you owe him anything ? "

DARLING : You must not ask him questions.

WOOTTON : But he is so rude to me.

DARLING : But if you are rude to him he will be ruder still.

As a matter of fact, under Darling's tuition, Sievier shaped considerably better, and towards the end of the case the Judge was able to congratulate him on his improvement as an advocate. The result of Sievier's cross-examination was to obtain from Wootton the admission that in the course of six years he had made over £17,000 by betting, that he had remitted between £30,000 and £50,000 to Australia, and that his son Frank had £30,000 invested there too. All his betting was done by an old and trusted friend named Wilkinson, who was away on a trip round the world and could not be called. This was most unfortunate, as he and not Wootton had all the records of the bets. It was unfortunate, too, that Wootton had not realised that it would be important for Wilkinson to be present to give evidence in the case.

Wootton denied that he had ordered his son Frank to pull Sir William Bass's horse, Stick-up, in the Cambridgeshire of 1907. The defence's suggestion as to this was that Wootton had backed Malna to win the Cambridgeshire ; after Stick-up's trials, in which Frank Wootton had been riding another horse, Frank had been so

impressed by Stick-up's performance that he had told his father about it; his father had thereupon induced Sir William Bass to let Frank ride this horse, and had told Frank to pull him so that Malna should win. Wootton denied this, as did his son Frank, who also denied that he had ever pulled a horse at his father's orders.

Neither Frank nor his brother Stanley were cross-examined by the defence, who felt it would not be right to try and compel the boys to give their own father away. Other apprentices of Wootton also gave evidence, as also did the trainers who were said to be in the ring with him. Richard Dawson, one of the trainers, suggested that there was more bumping and crossing in races than formerly, owing to the different style of riding; they now rode with short leathers so that the jockeys had less control over their horses. The Jockey Club could alter that by saying: "If you don't ride long we won't grant you a licence," on which Darling commented, amid laughter: "That is to say, if you don't ride longer you won't ride long."

Throughout the case Darling exhibited great interest in this question of the correct style of riding for racing. In former times jockeys in flat racing had employed the same long leather as is used in hunting. But the phenomenal success of Tod Sloan, the American jockey who first introduced what was then known as the Monkey-Seat in races in which he was competing with jockeys employing the traditional hunting seat, soon converted the racing fraternity to the short leather for racing purposes. Darling, however, remained a diehard in this matter, and continued to think that jockeys would be better advised to employ the same long leather that he used in the hunting field. He asked all the witnesses their opinion on this point, and generally speaking, whatever their view as to the effect on the winning of a race, they were agreed that the new style made for less effective control of the horse and consequently increased the possibility of foul riding. Lord Derby drew a distinction between pulling and the "foul riding" for which Frank Wootton had admittedly been several times punished; the former offence was the worse, for it was done deliberately to prevent a horse from winning, whereas foul riding might well be due to over-eagerness to win.

To substantiate their allegation with regard to the pulling of Stick-up, the defence called Madden, chief jockey at the Manton

stable, who gave evidence that he had ridden Dinneford in the Cambridgeshire and that during the race he had turned round to Wootton on Stick-up and shouted: "Why the hell don't you let him go?" because he thought Stick-up ought to have been in the forefront of the race and that Wootton was not riding him as he should. Other evidence of pulling was given in the case of Mitral, by a stable boy named Taylor, who had formerly been employed by Wootton, and was now a tout spying at racehorse trials. This engaging youth, who admitted that he rarely went to bed sober, said that on the first two occasions he rode Mitral, when Wootton had backed another horse, he was told to take a wide sweep at the turn and to ride the horse on the outside. Consequently he did not win. On the third occasion he was told to try and win, and win he did by a neck. A good deal more evidence was given by the defence on the subject of the in-and-out riding of various horses and other matters contained in the particulars.

Lord Durham, Lord Lonsdale and Sir William Bass raised the tone of the evidence for the defence, which perhaps would have been a little outweighed if Taylor and the rest had been left unsupported against Lord Derby and the Lambtons. Sievier then followed up with a vigorous address which contained a good deal of abuse of everybody and was rewarded with loud cheers from his supporters in court. In the course of his speech he commented on the absence of one or two people whose evidence, he said, would have been most important. This he attributed "to the master mind of Mr. Smith." To this Mr. F. E. Smith indignantly replied, "That is a characteristic remark and most improper." "I did not mean to imply," said Sievier, "that you had kept the witnesses away, but only that you had not called them." Darling then turned to Sievier with a smile and said, "*You* should know the proverb about glass houses and stones, Mr. Sievier." Mr. Marshall Hall and Mr. F. E. Smith then addressed the Court with their accustomed dialectical vigour and eloquence. At the conclusion of Mr. F. E. Smith's speech for the plaintiff applause again broke out in court. Darling commented on this at the beginning of his summing up, saying: "Mr. Smith complained that there was a claque following Sievier. It now appears that there are two claques following this case. The only person whom they will not applaud will be myself, and I am very glad to know it."

He then went through the evidence in detail under its various heads, for the direction of the jury. They had to decide whether the in-and-out running of horses was consistent with the fair conduct of racing; on the one hand they must take into account the bets made and on the other the fact that horses are not like planets. "There is no in-and-out running among planets; astronomers can calculate exactly where any particular planet will be next year. Horses are very different. Among other factors which make a difference are distance and the length of the grass to run upon." He then went on to quote the example of Fred Archer, who always took the Shepherd's Path at Ascot. Secondly, with regard to the betting, the manner in which the money was put on for the stable might give rise to suspicion. Unfortunately they had not been able to get the names of bookmakers with whom Wilkinson betted. Wilkinson himself was absent, the reason given being that he had no information that his evidence would be required. "You must remember that suspicion is not enough; but it is unfortunate that he should have dealt with enormous sums of money in this way and should not be here to explain his transactions." As for Taylor's evidence with regard to Mitral, it might have been bought, for he was confessedly a drunkard, poor and out of a job. On the other hand he was not a criminal and drunkenness had formerly not been considered discreditable. "If you believe him it does not prove that there was a trainer's ring but it proves something so discreditable to Wootton that you should give it weight in considering damages."

Darling left to last the consideration of the modern method of riding, and whether it would conduce to an increase in foul riding. This was an important element in the case and a question in which he took a keen personal interest. "It is all very well to say of Frank Wootton that he is the finest horseman since Archer. It is very unfortunate that the finest jockey since Archer has been before the stewards for improper riding more often than any other. . . . One explanation of the riding may be the manner in which, for the last ten or fifteen years, they have been allowed to ride. It is a matter of public interest. It is a manner of riding which apparently spoiled the Derby this year, if that is a matter upon which Englishmen care to speak." At this a proportion of the spectators in the Court, as if determined to falsify Darling's prediction that he would be

the only person who would not be applauded, gave a loud cheer. But Darling had meant what he said, instantly checked the applause, and went on : " Mr. Dawson has said that jockeys are smaller now and have shorter leathers and consequently have not the same control over their horses. He attributed a good deal of the bumping and fouling to the tactics of riding with short stirrups in a position like that of a monkey. . . . He has added that the stewards of the Jockey Club could alter that. This evidence might explain a good deal that has been imputed to these boys. Frank Wootton has said in the box that when hunting he rode with longer leathers. I hope that those who have the power will after this evidence take steps so that there may be less of this bumping and fouling and so that such a case as this may never again be brought into Court."

It was a long and balanced summing up, indicating which points were favourable to either party. After an absence the jury brought in a verdict for the plaintiff but found no malice and awarded Wootton only a farthing damages. It was a decision that followed not unnaturally from Darling's summing up, and he was not surprised by it. It reflected fairly accurately the merits of a dispute which he had enjoyed trying because it was concerned with a subject he personally liked and in which he was personally interested. But he regretted the case as it showed that practices existed that he could only view with concern and distress.

An amusing incident marked the close of the case. When the Jury had retired and had decided on their verdict the foreman said to the other members : " It would be rude to the Judge to ignore what he said about short stirrups, but I myself know nothing about racing and I don't intend to air my views in public." They all agreed, and one of the jurymen suggested that the way out of the difficulty was to add a rider to draw the attention of the Jockey Club to what the *Judge* had said on the subject of the new seat adopted by jockeys. The foreman duly wrote this out as a rider and handed it in with the written verdict to Darling. He looked at the rider and smiled, seeing at once how cleverly the Jury, by putting it back on him, had escaped from their difficulty. The newspapers, however, were not so quick, and the next day were full of headlines such as, " Twelve honest tradesmen dictate to the

Jockey Club," "British Jury teaches Jockeys how to ride," and "How to ride races by twelve who don't know."

It was nothing of the sort. The Jury drew the attention of the Jockey Club to the Judge's remarks. And whether right or wrong on this particular point, he was one who did know.

CHAPTER XVII

DARLING AND THE WAR

IN November, 1913, Darling suffered a great and irreparable loss; for in that month his wife died at the early age of forty-nine. Fifteen years younger than he, they had been a devoted couple for nearly thirty years. Now he was left to carry on alone. His elder daughter was already married, and his son Jack was an officer in the Army. Darling was left to bring up his younger daughter, Diana, who from the time she grew up became his constant companion.

This bereavement was a personal prelude to the great national bereavement that afflicted so many in the years of War. Darling was one of those who were not surprised by the advent of War. For some time he had detected signs of the coming storm, and had frequently urged the desirability of the country putting itself in a greater state of preparedness. Thus with regard to the menace of German intentions he had written to *The Times* as early as the beginning of 1902, to sound the warning note and bid his countrymen have this danger in their thoughts.

> Sir,—It is certainly devoutly to be wished—as has been observed by German statesmen and English alike—that there should be no misunderstanding between the German and English peoples. It is, therefore, as it seems to me, very fortunate that German Deputies should so candidly have expressed in the Reichstag their genuine feelings of hatred for our country and our Army. We also owe some acknowledgment to Count von Bulow for having administered so mild a rebuke to these offenders against the decency of debate as to leave us under no illusion as to his participation in sentiments which he is too diplomatic to express more plainly.
>
> But now that this matter has been made thus clear to us, and the reality of German hostility placed beyond all possibility

of dispute, it seems to me that we should act wisely in taking no further notice—verbally, at all events.

The newspapers have served the country well—and can now afford to be silent. If I myself seem to act contrary to my own advice, it is merely to recommend the counsel of Gambetta—"N'en parlons jamais. Pensez-y toujours."

Your obedient servant,

C.J.D.

The outcome of such thought he considered must be some form of national military service, such as was at that time being advocated by his friend Leo Maxse in the *National Review*. In connection with this, he wrote a long letter to *The Times* under his own signature. In this he reinforced his view, as was often his way, with a literary quotation from the eighteenth century. Considerable correspondence followed from his letter, which is especially interesting for the statement of his own views contained in the second paragraph.

Sir,

I imagine that many besides myself will have found nothing in today's news half so interesting as your summary of the advocacy of Mr. Watson, leader of the great Australian Labour Party, in favour of a scheme of military service for every citizen of the Empire.

Just at present it seems to be dawning on many people that it is not less derogatory to a free man to be obliged by law to defend his own country and all his rights than to be equally compelled to pay others to defend them. Indeed one wonders how it came to be so completely forgotten that bearing of arms in defence of his land was precisely that which most distinguished a gentleman or yeoman from a villein—a freeman from a serf.

Efforts were, no doubt, made to prevent the disappearance of a system which Mr. Watson—in accordance with Mr. Haldane—now seeks to revive in a form adapted to present circumstances. My reason, Sir, for now addressing you is that last evening, taking down a volume at random, I happened upon such an attempt; and your leading article this morning is so plainly inspired by the same feeling that perhaps you will permit me to offer Mr.

Watson and Mr. Haldane a cup filled by Akenside from the source of their patriotic propaganda.

" An Ode to the Country Gentlemen of England " is dated 1748, the year of that humiliating Treaty of Aix-la-Chapelle, and it contains the following lines, besides many more for which I would refer your readers to the poem itself. (There follows a long extract, the first line being :

" Whither is England's ancient spirit fled ? "

and the letter continues) :

As one whose interest in this matter is necessarily only literary, may I, Sir, point out how the poet does in the first four lines of that stanza anticipate the Labour leader's declaration that " as true citizens of the Empire we must be ready to assist in maintaining its integrity," while in the remaining verses he forestalls the Secretary for War in his desire to create an army in each country " by way of giving the country gentlemen something to do ? "

I remain,

Your obedient servant,

CHARLES DARLING.

Brockenhurst,
Sept. 20.

In 1911 his mind was still working along the same lines, and lover as he was of the undisturbed rusticity of the New Forest, he wrote to *The Times* protesting against the difficulties placed in the way of holding military manœuvres there :

. . . Surely, Sir, it were well to allow here as much liberty to our officers as to our ornithologists. On the barrack square of Winchester you can neither train yeomanry nor rob birds' nests ; but for a victory, as for an omelette, it may be necessary to break eggs—even unhappily, the rarest ; while to learn how best to defend Camberwell it may happen that we must sadly sacrifice some of its legendary " beauties."

So far from thinking the troops have been allowed too much freedom of training in the New Forest, I myself have felt the shame and the ridicule of their position, on seeing regiments, when manœuvres have been permitted here, checked in the crisis of an essential movement by the notice that some cover was

" out of bounds." Then the call of an alarmed game bird is at once answered by the " cease fire " of the bugle. So " Trumpet to pheasant spake—To hear was wonder "—if I may paraphrase old Drayton. This is the spectacle we offer to the military attachés of neighbouring nations, accustomed at home to see the efficiency in arms of the whole people held paramount to all considerations of sport and to pleasures, even the most rural and refined.

I remain, Sir,

Your obedient servant,

C.J.D.

Darling was always interested in military things, and especially so in those years immediately preceding the War when an intuitive sense of anticipation imposed upon the country a keener realization of the vital necessity of preparation. In September, 1913, he attended annual manœuvres in a spectatorial capacity with Mr. Henry Chaplin (later Lord Chaplin and father of the present Lady Londonderry), and followed the proceedings with the greatest interest.

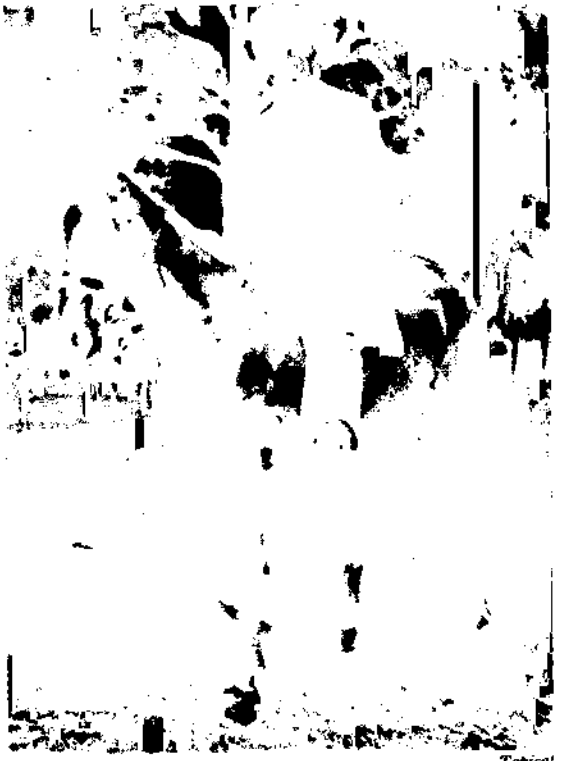
Darling was spared the inevitable instinctive regret which was inevitably in some measure experienced by those who preferred Germany to France. As we have seen, he was a great lover of things French, and himself partook largely of the French attitude of mind, due no doubt to his French descent on the distaff side. He spoke and read French fluently, travelled there frequently, and knew a great many French people intimately. In the case of Germany it was different. He did not speak German nor read it; he had no German blood and few German friends; and in his whole life he paid only one short visit to Germany, with the object of taking a cure. For him, therefore, if war there had to be, there was no doubt that we were fighting on the right side.

It must not be supposed, however, that the War did not bring to Darling, as it did to others, intense anxiety. Not only did he fill an elevated and responsible post, but he had also the ever-present personal concern imposed upon him by the fact that his son, Jack, was fighting with his regiment in France. To Darling, therefore, the War was an immensely personal thing, and, as with many Englishmen, his bitterness grew as the years went on. His feelings



Fox Photos

FIELD-MARSHAL SIR WILLIAM ROBERTSON AND LORD DARLING SHARE A JOKE AT THE ROYAL GARDEN PARTY



Topical

LORD DARLING TAKING HIS MORNING RIDE IN THE ROW

are illustrated in a letter he wrote in May, 1917, to the Hon. A. E. Gathorne-Hardy—an old friend whom he had known since they were together at the Bar and in the House of Commons. Gathorne-Hardy had written to express regret at the critical attitude taken up by *The Times* regarding his conduct of the Romney Picture Case, which is described in a later chapter.

Sidmouth,
Tuesday.

My dear Hardy,

It is most kind of you to have written to me in such terms—I am far more affected by your approval than by the censure of *The Times*—of course I know that like all men—and perhaps in a higher degree than most—I have " les defauts de mes qualités " but even the Lord Northcliffe has these.

Your visit to Folkestone must, I fear, have been saddened by the air raid of Friday last—for I gather Folkestone is the town that suffered. How stupid the Germans are—in reprisals I have no faith—for they will always beat us in mere cruelty—but they will never be forgiven for cold-blooded murder of women and children.

Again thanking you for your thought of me,

Ever yours sincerely,
CHARLES DARLING.

In the same year, Darling had several poems in the *Morning Post* on the subject of the conflict. One was a short four-line poem in French, headed " Reprisals."

Quoiqu' une pareille réplique
Le peuple anglais demande,
Il trouve peu magnifique
Cette guerre à l'allemande.

Another four-lined poem, published in the *Globe* under the title, " A Vicious Circle," with the initials C.J.D., had reference to the alleged existence of a German factory for the profitable utilisation of Army corpses. It ran :

The German boils his dead to feed his swine,
Then eats the sausage their fat flesh provides,
Subserving thus Creation's grand design—
No pig is wasted—each twice slain abides.

Cast in a more serious and dignified note was his poem " The Barrier."

> Where the hot breath of battle drifts East, ever East.
> Searing all 'twixt the Somme and the Rhine,
> Where stand the burnt bulwarks which sheltered the Beast—
> Is that the true Hindenburg Line ?
>
> Where the plaintive sea-fowls hover and scream
> O'er wan faces awash in the brine,
> Along the dread frontier of Germany's dream—
> Is that, then, the Hindenburg Line ?
>
> No, no ! 'Tis a gulf that the Teuton divides
> From mankind and from mercy divine,
> Deep down in the soul where the Devil presides—
> That, that is the Hindenburg Line !

In the previous year the *Morning Post* had published a poem by him entitled " Tout Vient à Point à qui sait Attendre." This poem which bore no signature, appeared with a note of introduction : " The following verses have been written by a keen student of events, in the scanty leisure afforded by the exacting tasks of the day. We publish them as evidence not only of what is passing in men's minds at the present hour but also of the compelling force of great issues towards lyrical utterance." On the cutting of this poem which he kept, Darling pencilled the words ; " Written on the Bench at the Old Bailey, on the occasion of the Fall of Mr. Asquith's Ministry, 7th Dec., 1916."

Another issue which compelled him to lyrical utterance was the recalcitrant attitude of certain Irish Nationalists. On this point he had a poem published anonymously in the *Morning Post* in June, 1918, entitled " Suum Cuique." Under his cutting of this poem Darling wrote : " Conscription having been enacted for Ireland long after it had been enforced in England, Scotland and Wales, the Irish Nationalists defied the Government to enforce it. And the Government allowed the law to remain a dead letter. When in Parliament I have often heard the Parnellite M.P.s claim that the Irish Brigade won for France the Battle of Fontenoy."

At an earlier date there had appeared in *The Times* a letter on the subject of German submarines and their crews. It appeared

under the signature "X," but was in fact, written by Darling. It ran :

Sir,

The letter of Sir Herbert Stephen in *The Times* of today, shows how extremely difficult it would be to convict of any crime, such as piracy or murder on the high seas, the crews of German submarines now in English custody ; and unless they could be convicted and punished by due process of law no one should desire punishment to be inflicted under legal forms. Yet these men are in all probability mere murderers, as several members of the Cabinet have called them. This being so, why should they not be left to their fate when their vessels are sunk ? There is no legal means, perhaps, of punishing them ; but neither is there any legal obligation to rescue them from drowning deserved. The conclusion of the whole matter seems to me and to others to be well put by Arthur Hugh Clough in these lines :

Thou shalt not kill, but need'st not strive
Officiously to keep alive.

Your obedient servant,

X.

March 11.

The War had the effect, too, of throwing more work upon Darling, as it did on many others. Lord Reading, who had been made Lord Chief Justice in 1913, was frequently required for national service of a non-judicial character. Thus in 1915 he went to America with the Anglo-French Mission for the purpose of negotiating a loan in the United States. Later on he was to go more permanently to Washington as Special Envoy and finally as Ambassador. It followed that he could not discharge the onerous duties of Lord Chief Justice in addition to duties that necessitated his frequent and prolonged absence not only from the Bench but from the country. He did not resign his position as Lord Chief Justice, however, and Darling, by this time Senior Puisne Judge became Acting Lord Chief Justice. Had Lord Reading resigned it is possible that Darling might have been appointed Lord Chief Justice, but Lord Reading did not resign until his appointment as Viceroy in 1921. He remained, therefore, titular Lord Chief

Justice during his absence, while Darling discharged the functions of that office on his behalf.

This new position with its responsibilities brought him a fresh honour, which he much appreciated. On November 27 he received an intimation from Sir John Davies that the King had approved of the recommendation that he should be sworn of the Privy Council. On December 17 he received a direction from Sir Almeric Fitzroy to attend at Buckingham Palace on December 21 to be sworn. The other new Privy Councillors sworn with him were Lord Rothermere and Sir Auckland Geddes. The Press and the Profession, which had received his appointment as Judge with such mixed sentiments twenty years before, were unanimous in the welcome they accorded his new honour. When he took his seat on the Bench on December 12, the day on which it was publicly announced that the honour was to be his, a large gathering of members of the Bar was present to congratulate him, and he was accompanied by no fewer than six High Court Judges, including his old friend, A. T. Lawrence. Another friend, F. E. Smith, then Sir Frederick Smith, Attorney-General, voiced the congratulations of the Bar. "I think it is sixteen years ago," he said "since I argued my first case before your Lordship. I was then a young man recently called to the Bar. I shall never forget the kindness and encouragement I received from your Lordship on that occasion. This kindness was no isolated occurrence. All my colleagues have had the same experience. Your Lordship has introduced what has been described as a little judicial levity. The Bar has never failed to recognise that this humour never prejudices but often contributes to the elucidation of justice, which has been your Lordship's passionate object during your career." In reply, Darling said: "The Bar and my Colleagues have always taken an indulgent view of my career. I have tried at all events, to adhere on the Bench to the standard of those that preceded me. I am the first to recognise that everyone, myself included, naturally has the defects of his qualities. I have also discovered that some of us are said to have the defects of those qualities which are imputed to us whether they are our own or not. I thank you deeply."

It was the first time that a Privy Councillorship had been conferred on a Puisne Judge while he was still discharging the duties of his Judicial Office. This was a fact of which Darling was always, and deservedly, very proud. I reminded him that at a considerably

later date the same distinction fell to Mr. Justice Avory. "Ah," he replied, "But he was very old." At the time of the conversation, Lord Darling was eighty-six.

It seldom falls to the lot of a Lord Chief Justice, or one who is acting in his place, to commemorate the actions of his profession as well as preside over their business activities. Darling, however, in his capacity as poet, commemorated the sacrifice made by those members of the Bar who volunteered for service, in his sonnet, "To the Soldiers of the Temple."

> Ye served at Law, yet waited not its call
> To Arms; when as the foresworn Hun in hate
> Of covenanted right, an innocent State
> Trampled in blood, then sprang at arming Gaul,
> Ye left our Knightly fane and Common Hall,
> As erst those Templars who, with hearts elate,
> Did 'neath the Cross the Crescent's pride abate,
> For Christ's high law content to fight or fall.
>
> Though some are fallen Jordan or Aisne along,
> Your laurels deck the tombs of those steel'd Knights
> Who Beauseant planted where ye kneel this day.
> Justice arisen, and ordered freedom strong,
> The Templars' service, as their death, requites,
> Who left the happier, took the holier way.

Not all Darling's activities were connected with public life or with the administration of Justice. Like others in those days he did many things for the cause, of which no one knew. Thus, in 1917 he tried a libel case brought against the editor of some journal devoted to the piano. A point arose as to the superiority of German pianos. "I have a Bechstein," remarked Darling, "but I don't play on it." The following day a lady giving evidence in the case was asked whether she had a piano? On her replying in the affirmative, she was asked what kind it was. "A Steinway," she said, "but I don't play on it," echoing Darling's remark of the day before. In consequence both Darling and the lady received letters the same day asking if they would give their pianos for the wounded in hospital. The lady did not send hers as she had a family of school age who did play on it. But Darling sent his off at once.

It was one of many unchronicled incidents, characteristic of his kindness and patriotism.

CHAPTER XVIII

THE ROMNEY PICTURE CASE

OF the many remarkable things about the Romney Picture Case not the least remarkable is the fact that it should have been tried at all at the time that it was tried. In the middle of the World War, which focused the attention of all on the various theatres of its operations, Darling's Court in King's Bench 4 became for over a week a secluded island of artistry, where the great painters of the land joined with its legal luminaries in arguing whether or not a picture, painted a hundred and fifty years before, was or was not by the brush of Romney. Of all the cases Darling tried in the quarter of a century he sat on the Bench, this was his prime favourite. It dealt with a subject he loved and of which he had extensive personal knowledge; and in later days he often referred appreciatively to the case and to the pleasantness of the atmosphere in which it was tried.

The Romney Picture Case is more correctly, if more prosaically, described as *Huntington* v. *Lewis & Simmons*. Messrs. Lewis & Simmons were well-known art dealers in Bond Street, Mr. Huntington was an American millionaire who collected pictures. In November, 1912, he bought from Messrs. Lewis & Simmons a picture of two ladies which had been sent to New York in the previous September. This picture had been sold on the death of its former owner in February, 1912, to a St. James's Street art dealer for 361 guineas, the picture being described at the sale as by Sir Joshua Reynolds. From this dealer it passed immediately to Messrs. Lewis & Simmons for £717 by a knock-out. In April, Messrs. Holder, picture-cleaners, gave a receipt to Messrs. Lewis & Simmons "for cleaning full-length picture, two ladies—Romney." In May, Mr. William Roberts, a reputed Romney expert, reported that the picture was a very fine and characteristic Romney, and that the brown lady in the picture was Mrs. Siddons, and the white lady her sister, Fanny Kemble. It was, therefore, as a Romney

that the picture was bought by Mr. Huntington for 100,000 dollars. Messrs. Lewis & Simmons gave him three guarantees with the picture ; first that it was by Romney, secondly that it was a painting of Mrs. Siddons and her younger sister Fanny Kemble, and thirdly that it was painted during the period from December 3, 1776, to January 14, 1777, and that it was the picture as to which entries were to be found in Romney's Appointment Book between those dates. In 1914, Mr. Huntington began to suspect that the picture was not what it was guaranteed to be. He sent for Mr. Simmons, but was not satisfied and sent the picture back to England. He then proceeded to bring an action for damages for Breach of Warranty on the sale of the picture, and the result was the Romney Picture Case.

King's Bench 4 presented an unusual spectacle when Darling sat to hear the case of *Huntington* v. *Lewis & Simmons*. There were distinguished counsel such as Sir John Simon, Mr. Hemmerde and Mr. Douglas Hogg, who were for the plaintiff, and Mr. Leslie Scott, who was for the defendant ; there was one young counsel whose fame was to lie in another sphere, Mr. Philip Guedalla, who held a watching brief for Duveen Brothers. But distinguished counsel were a commonplace of King's Bench 4, as was the tightly wedged throng of spectators. What made the occasion unusual was the large assemblage of Royal Academicians and other distinguished painters and art dealers, who had come to swear either that the picture was or was not by Romney, according to their revelation. Most peculiar of all was the presence of the picture itself decorating the sombre court. It did not decorate it alone for long, for at the luncheon adjournment on the first day Sir John Simon asked Darling's permission to hang four undoubted Romneys, the loan of which the plaintiff's solicitors had procured, adjacent to the disputed picture. Permission was granted—Darling saying, " You can leave them here permanently, if you like "—and the four Romneys were duly hung framed, surrounding the unframed picture ; to anybody with a knowledge of art the result was considerably to overshadow the disputed picture, and it was not without its effect on Darling. From time to time he indicated points under discussion on the canvas. On one occasion, wishing to draw attention to something at the top of the painting he stood on his chair, and pointed with his umbrella. Suddenly the chair gave a

lurch in the direction of the picture and for one long moment of suspense it seemed as if Judge and umbrella might be precipitated through the canvas. This would have raised the interesting question: what is the position at law when the subject matter of the action is destroyed by Judicial incidence? The chair righted itself, however; Darling regained his balance; the picture remained unscathed, and the question unanswered.

The defence did not dispute the giving of the guarantee, and so the case was fought around the issue: were the guarantees correct or were they given in error? The battle on this issue was fought along two fronts, the historical or chronological, and the artistic. The historical issue resolved itself into the question as to whether the plaintiffs could prove an alibi for Mrs. Siddons over the relevant dates. If they could do this, the third guarantee was clearly wrong. With great diligence the plaintiff's solicitors had checked up all Mrs. Siddons's movements in the late '70s and the early '80s and Sir John Simon was able to prove that she was in Manchester playing the part of Lady Fairfax in the Theatre Royal at the time when Romney was painting the two ladies in Cavendish Square to whom the entries in his appointment book referred. Mr. Leslie Scott, therefore, was forced to agree that the guarantee that this was the painting referred to by Romney in his book was wrong. Nevertheless, Darling held that he would enter judgment for the defendants if they succeeded in establishing the accuracy of the other two and more important guarantees. It was now largely an artistic issue; and the bulk of the trial consisted in the giving of evidence by various experts with frequent interventions by Darling, who enjoyed himself hugely, flavouring the proceedings with witticisms and literary quotations and giving not a little expert evidence himself.

The plaintiff's evidence was directed to three main points: to showing that the picture was laboriously painted, and was a bad composition feebly executed; that the face in the picture was not the face of Mrs. Siddons; and that the brush work did not resemble Romney's. The plaintiff led off with a series of distinguished painters, the first of whom was the Hon. John Collier, who said that the composition was very bad, and that it gave Mrs. Siddons "a curious, shambling, knock-kneed action," while her sister's arm was like a leg of mutton. In cross-examination Mr. Scott put to

him the opinion of Sir William Richmond, whose evidence had been taken on commission in America, and who had said that if God Almighty told him it was not a Romney he would not believe Him—a remark, incidentally, which shocked Darling a good deal. Mr. Collier said that he could not understand Sir William taking this view, as he knew that he had been brought up in art and his father was an artist too. At this Darling said, " There were two Richmonds in the field."

Mr. Scott went on : " Is the best opinion not that of an artist but that of an art critic ? "

COLLIER : Oh no ; we artists don't think much of art critics.

DARLING : Who was it that said a critic was a man who had failed in literature or art ?*

Mr. Collier suggested that the painting might be by Romney's friend Ozias Humphry ; Sir Edward Poynter suggested that it might be by Angelica Kauffmann, though probably not good enough. Mr. Scott then hit on the happy idea of subjecting these distinguished witnesses to a credit test. He handed round a photograph of a painting and invited them to express an opinion as to its authorship. A certain caution descended on the experts. Sir Edward Poynter and Mr. Collier started by saying that they did not know, but Sir Edward improved upon this by saying it looked as if it might be by Angelica Kauffmann. Sir Walter Armstrong, a former director of the National Gallery of Ireland, volunteered the negative information that it was not by Gainsborough. Darling had a look at the photograph, and said that it had a look of Sir Peter Lely, though he did not think that Lely would have painted that face. Mr. Scott then revealed that the photograph was of a painting by Romney.

At this Darling said : " I was not going to say so, but if I had been a dishonest critic, and you had asked me who it was I should have said by Romney most certainly."

Sir Luke Fildes, not to be out-done, said that he had thought it was an early Romney, but had not liked to say so ; though what inscrutable and invisible forces restrained him from expressing his opinion it is difficult to conceive.

In the course of the evidence of Sir Luke, Darling gave a learned disquisition on the subject of Murillo and his discovery

* It was Disraeli.

that certain painters have certain idiosyncrasies ; this he did, as he pointed out, to save time. It also gave him the opportunity for a further quotation as when Sir Luke said that, at a time when an artist had fallen under a certain influence his work often differed considerably from what he did before and afterwards, Darling rounded off his observation by quoting Matthew Arnold, " Something within ourselves, not ourselves, making for righteousness." He also recollected the picture by Reynolds with a very poor tiger in it, where " it was explained that he had not got a live tiger at hand when he was painting it."

Sir Walter Armstrong was able to produce a painting by Ozias Humphry which, he said, bore a very strong resemblance to the work in the disputed picture. " Did not many painters of that period paint ladies with a mouth which they said was like Cupid's bow ? " asked Darling.

" Yes," was the answer.

" Ah," said Darling, " a purely allegorical mouth."

Sir Edward Poynter then mentioned that the portrait by Humphry was of his great-grandmother. Without a moment's hesitation Darling recited Locker-Lampson's rhyme :

> Were Romney's limning true
> What a lucky dog were you
> Grandpapa !

The Court got a lot of fun out of passages which were recited from a book called *The Jolly Duchess*, which contains references to contemporary comment on Mrs. Siddons. It was there suggested that the reason for Mrs. Siddons's disinclination to wear masculine dress was consciousness of her anatomical limitations, notably her knock-knees—which, it had been suggested, was the effect produced in the painting. But, *The Jolly Duchess* goes on, ". . . in her early days when she played comedy parts Mrs. Siddons could not have been so squeamish. At Cheltenham she was once Widow Brady in *The Irish Widow*, and, having no masculine dress for the scene where the widow changes her sex, a gentleman, according to Mrs. Kennard, ' politely left his box,' provided her with the necessary garment or garments, and stood in the side wings with a petticoat over his shoulders until his property was returned to him." Another passage from *The Jolly Duchess* referred to an occasion when Mrs.

Siddons had grown stout and unwieldy and attempted to play the part of Isabella. When she knelt to the Duke " two attendants had to come forward to help her to rise." " In 1776," said Darling, " Mrs. Siddons was able to raise herself on her own merits."

More witnesses followed for the plaintiff, among whom was Professor Laurie, an expert on the chemistry of art. Darling cut short Mr. Scott's cross-examination of him with regard to the materials of the dresses portrayed by saying, " It is bad enough to have to judge whether it is a Romney ; but to have to judge it with the knowledge of a haberdasher is quite a different thing." A general discussion then followed between Professor Laurie and Mr. Scott as to whether the drapery in the picture was painted from an actual model. Darling again intervened. " An artist," he said, " might paint his conception. Do you remember the answer that the young artist got when he said to Sir Joshua Reynolds, ' Tell me, Sir, what you mix your paints with. I want to produce the same effect,' and Sir Joshua replied, ' With brains, Sir.' "

In the cross-examination of Mr. Edward Vicars, senior partner in Vicars Brothers, the well-known Bond Street art dealers, a new line of defence was developed. It was that Duveen Brothers had long had Mr. Huntington as one of their best clients, and that when Messrs. Lewis & Simmons sold him the picture Duveen's were afraid of losing him as a customer, and therefore engineered the whole of the case as a matter of trade rivalry by telling him that the picture was not a Romney. Mr. Vicars, who compared the arm of the brown lady in the picture with the drapery on it to " the burst tyres of a bicycle hung on a peg," denied that he was employed by Messrs. Duveen. His cross-examination proceeded briskly. He had only needed, he said, a casual glance to see that it was not a Romney. The cross-examination had not proceeded very far before Mr. Conway, who was cross-examining, told him, " You have imparted the most cynical note into this case that we have had from any witness hitherto ; we have up to now been living in a world of ideals." Later, however, Mr. Conway appears to have revised his views, for he complimented Mr. Vicars upon his delightful directness of phrase. But it did not convince him entirely, for at the conclusion of the cross-examination a question arose as to Mr. Duveen's evidence. " I think," said Mr. Conway, " if your Lordship will wait and see there is more in it than meets the eye."

" I am not going to wait and see," replied Darling ; " I have seen the tragic consequences that followed on the other ' wait and see,' and I will not have them follow on mine."

Darling was never a political admirer of Mr. Asquith.

The other witnesses for the plaintiff included Miss Adams, sister of the original owner of the picture. Her evidence showed how her father had bought the picture at a country sale some forty years previously. He thought it was a Reynolds, but none of his family believed it to have much value, for " the Governor's ancient masters were a by-word in our house." Mrs. Clement Parsons, author of a biography of Mrs. Siddons, gave evidence. Her book said that Mrs. Siddons no doubt looked out of the oriel window of Guy's Cliff, the house in which she had been in domestic service with Lady Mary Greathed, who was of the same family as Lady Darling. It was pure conjecture that she had done so, but Darling himself had in fact looked out of the oriel window through which Mrs. Siddons was reputed to have gazed.

At the conclusion of the case for the plaintiff, one of the guarantees, as already mentioned, had been proved to be wrong. On the artistic issue, the plaintiff had succeeded in building up an impressive edifice of expert evidence. Mr. Leslie Scott, therefore, had a very difficult task for the defence, and it was not made easier by the fact that some of his witnesses, having been admittedly wrong on the third guarantee, could hardly expect to speak so authoritatively on the remaining two. Nor, in fact, were the defendant's expert witnesses on the whole either so eminent or so confident as those called by the plaintiff ; they were more liable to be shaken or to make admission under cross-examination. However, Mr. Scott bent himself to his task and contended that the picture, which was much too fine a one for Ozias Humphry, had marked Romney characteristics. His theory of the origin of the picture was that Romney, on his return from his journey to Italy and Paris in 1775, having lost his painter's practice, came back fired with the idea of painting imaginative pictures. Seeing Mrs. Siddons, he got her to sit for him, and painted this picture, half portrait and half fancy picture. This started him on his success, though it was in fact " a deviation from the true voyage of Romney in his artistic career." This theory did not impress Darling much, as it was " all fancy really."

Another point in Mr. Scott's argument was that Mr. Huntington had had the picture hung in the Metropolitan Club, New York, where people were frequently coming in and out, and no one had ventured to say that it might not be a Romney. This impressed Darling even less: "How many," he said, "would pretend to know a Romney from a Reynolds or a Gainsborough? And it would take a good deal of courage in an ordinary person to say that was not a Romney, especially if you knew the man had just paid £20,000 for it."

Mr. Scott had about as many witnesses as Sir John, and Sir John attacked them with the same skilful address that Mr. Scott had shown in cross-examining the plaintiff's witnesses. He commented adversely on the way in which the "white lady's" right hand and the "brown lady's" left hand were clasped, and asked Mr. Roberts, who had originally certified the picture to be a Romney, whether he knew many ladies who could clasp hands in such a way. Mr. Roberts replied that his knowledge of ladies was not very great, whereat Mr. Scott said that he would undertake to stand up with his Junior and do it himself. "If you do," said Darling, "I shall expect to see you appearing at a music-hall as the Boneless Barrister."

By this time Mr. Scott was fighting a losing battle, as can be seen from the nature of Darling's comments and interventions, which continued to be frequent. But his defeat came prematurely, unexpectedly, and dramatically. Neither side had relaxed its efforts to find some positive and conclusive evidence to show the authorship of the picture. It so happened that it came to both simultaneously. On the evening of the sixth day of the trial photographs came into the possession of both sides of the original sketch for the picture, at the foot of which were the initials, "O. H.", with the H inside the O and encircled by it, which was Ozias Humphry's method of inscribing his signature. There could be no doubt now that the picture was painted by Ozias Humphry, and the case was at an end. There came a dramatic moment on the seventh day of the trial when Mr. Scott announced the discovery and its consequences. He said that in the circumstances the defendants would at once take the picture back and give Mr. Huntington his £20,000. Darling congratulated both sides on the very creditable way in which the case had been fought. "It has," he said, "been

proved to demonstration that the picture is by Ozias Humphry and therefore not by Romney. But whether what has been brought out this morning had come out or not, unless Mr. Leslie Scott had been able to change my mind altogether by his address to me today I should have delivered judgment to exactly the same effect. . . . I was very strongly of opinion that it was by Ozias Humphry but I should not have given a finding to that effect because it was not necessary." He concluded by saying : " This has been in the true sense of the word, and not a discreditable one, a *cause célèbre*. It has involved enquiries into the lives of many celebrated people long since dead, and I do hope that the trustees of the National Collection referred to will find it possible to accept this picture which Mr. Lewis generously offers. I think it has a historic interest, and so many people have given evidence that there is so much that is good in the picture that I think it is worthy to find a place in a collection where not every work is a *chef d'œuvre*."

So ended a case remarkable alike for its subject matter, its conduct and its conclusion. It has not, of course, been possible, in this narrative, to include by any means all the witticisms of which Darling delivered himself during the trial. For instance, when Mr. Conway asked Mr. Vicars what his strong point was, Darling interjected : " I should say that it is giving evidence." When reference was made to Mrs. Siddons playing the part of Sylvia in the play *Simon*, Darling said that she was poaching on the preserves of learned counsel, and drew Sir John's attention to the fact that the full title of the play was *Simon the Enchanter*. At another stage of the proceedings he remarked that Mrs. Siddons went the Oxford Circuit " before my time." In addition, too, to the quotations already mentioned he capped Sir John Simon's " perfumes of Arabia " with " out damned spot," quoted Goldsmith's " contrived a double debt to pay," Wordsworth's " the light that never was on sea or land," and Tennyson's " the gardener smiled at claims of long descent." It was a richly allusive, gaily epigrammatic Darling who tried this case : for entertainment value it was Darling at his very best.

CHAPTER XIX

WAR-TIME TREASON AND MURDER

THE pleasant detachment from the graver conflict overseas which characterised the Romney Picture Case was a rarity in those war-time years. The thunder of artillery in France found its echo in the grimmer note struck in many of the proceedings in the Courts in those years. One especially revolting case tried at this time was that which has become famous as The Brides in the Bath Case. Darling, however, was engaged only in hearing the unsuccessful appeal, which was very much of a forlorn hope. Nor was there any particular interest in the crime of George Joseph Smith ; what interest does attach to the case beyond the purely sensational is that it is an instance, common enough elsewhere but very rare in the annals of English crime, of a professional murderer.

We are on very different ground with Roger Casement. This is not the place to recount the story of the strange Irishman, who was knighted in the service of the Empire and executed in an effort to shake it in the very heart of its dominion.* The beginning of the War had found Casement in the United States, whither he had gone to seek aid for the Nationalist cause in Ireland. Unlike John Redmond, he was not inspired to a higher loyalty by the German challenge. Redmond said in the House of Commons that " the democracy of Ireland will turn with the utmost anxiety and sympathy to this country in every trial and every danger that may overtake it." Casement said that Ireland had no blood to give to any land, to any cause but those of Ireland. Redmond recruited for the cause of Empire ; Casement bent his efforts to enrolling amongst the Irish prisoners in Germany an Irish Brigade for the prosecution of the enemy's work in Ireland. Casement's effort foundered on the rock of the patriotism of those who, in their own words, " in addition to

* For a fuller account see Stephen Gwynn's *Life of Roger Casement* or the chapter "Treason and Death of Roger Casement" in Derek Walker-Smith's *Lord Reading and his Cases*.

being Irish Catholics had the honour to be British soldiers." He launched his forlorn hope on the wind-swept shore of Kerry just before the Easter Rising of 1916. His effort to land arms and ammunition to assist that rising failed of its object, and he was himself taken under arrest and conveyed to the Tower of London.

Casement was charged, under the Statute of Treason of 1351, with " adhering to the King's Enemies elsewhere than in the King's Realm, to wit in the Empire of Germany." In his trial at Bar before Lord Reading, Mr. Justice Avory, and Mr. Justice Horridge, he was found guilty and sentenced to death. He appealed, and his case was argued on appeal by Serjeant Sullivan, last of the Irish serjeants, before a Court of Criminal Appeal presided over by Darling. The point of the appeal was, briefly, that the Statute of 1351 did not recognise as treason acts that were committed outside the Realm. The words of the Statute were : " If a man do levy war against our Lord the King in his Realm, or be adherent to the King's Enemies in his Realm giving them aid and comfort in the Realm or elsewhere." The Crown's interpretation of the Statute was that it should be read, " if a man do levy war against our Lord the King in his Realm or be adherent to the King's enemies in his Realm (giving to them aid and comfort in the Realm) or elsewhere," thus allowing the act of adhering to be either at home or abroad, and thus embracing as treason the acts committed by Casement in Germany.

Thus it came about that in July, 1916, the Court of Criminal Appeal had to decide the fate of a man whom lay opinion held to have been taken in the very act of treachery when his fellow-citizens of the Empire were bracing themselves to throw back the German attack on Verdun and to launch the counter-offensive on the Somme. His fate depended on the position of a comma in a statute written in Norman French nearly six hundred years ago. That such a point at such a time could be decided as a question of pure Law is one of the miracles of our legal system.

Serjeant Sullivan produced many old cases in support of his interpretation of the Statute. At the end of the first morning he quoted a dictum of Lord Esher, " that this case would be a perfectly plain case to any man who did not commence by confusing his mind with reading a large number of other cases." " That," replied Darling, " is dangerous doctrine when you have been addressing

the Court for two hours." A little later, however, he made amends by paying a neat compliment to the Serjeant. Serjeant Sullivan quoted Sir James Dyer, at which Mr. Justice Atkin asked whether Sir James was not King's Serjeant at that time. " He was Chief Justice of the Common Pleas afterwards," replied Serjeant Sullivan ; " I do not know if he was King's Serjeant. That would add authority to it." " If he was a Serjeant at all," interposed Darling smoothly, " that would be a good deal."

It is impossible to summarise here the argument which went on in the Court of Criminal Appeal. Serjeant Sullivan had some cases, but the Crown could counter these with others, notably that of William Cundell, in 1802, who was executed for adhering to the King's enemies outside the Realm. What was lawful for Cundell was lawful for Casement. The other consideration, which was fatal to the Serjeant's contention, was this ; he asked the Court to construe the Statute as if they were reading it for the first time ; but this meant in effect the brushing aside of the opinion of Coke, Hale and Hawkins, who had considered the meaning of the Statute extra-judicially. On this point the following dialogue took place :

DARLING : Did Lord Coke only go wrong about the law of treason or are his other conclusions wrong ?

SULLIVAN : Some of them. It is as impossible for a man to be always wrong as it is for him to be always right.

DARLING : Many Judges have ascertained that for themselves.

On this point, Darling quoted Best, C.J. in his judgment: " I am afraid we should get rid of a good deal of what is considered Law in Westminster Hall if what Lord Coke said, without authority, is not Law. He was one of the most eminent lawyers that ever presided as a Judge in any Court of Justice, and what is said by such a person is good evidence of what the Law is, particularly when it is in conformity with justice and common sense." Darling then went on, " If one wanted an opinion of a person who was not a lawyer, one with whom I dare say Serjeant Sullivan at all events is perfectly familiar, it is where this same Lord Coke is alluded to by John Milton as one who

> . . . on the Royal Bench
> Of British Themis, with no mean applause
> Pronounced, and in his volumes taught our laws
> Which others at their Bar too often wrench.

being Irish Catholics had the honour to be British soldiers." He launched his forlorn hope on the wind-swept shore of Kerry just before the Easter Rising of 1916. His effort to land arms and ammunition to assist that rising failed of its object, and he was himself taken under arrest and conveyed to the Tower of London.

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Thus it came about that in July, 1916, the Court of Criminal Appeal had to decide the fate of a man whom lay opinion held to have been taken in the very act of treachery when his fellow-citizens of the Empire were bracing themselves to throw back the German attack on Verdun and to launch the counter-offensive on the Somme. His fate depended on the position of a comma in a statute written in Norman French nearly six hundred years ago. That such a point at such a time could be decided as a question of pure Law is one of the miracles of our legal system.

Serjeant Sullivan produced many old cases in support of his interpretation of the Statute. At the end of the first morning he quoted a dictum of Lord Esher, " that this case would be a perfectly plain case to any man who did not commence by confusing his mind with reading a large number of other cases." " That," replied Darling, " is dangerous doctrine when you have been addressing

the Court for two hours." A little later, however, he made amends by paying a neat compliment to the Serjeant. Serjeant Sullivan quoted Sir James Dyer, at which Mr. Justice Atkin asked whether Sir James was not King's Serjeant at that time. " He was Chief Justice of the Common Pleas afterwards," replied Serjeant Sullivan ; " I do not know if he was King's Serjeant. That would add authority to it." " If he was a Serjeant at all," interposed Darling smoothly, " that would be a good deal."

It is impossible to summarise here the argument which went on in the Court of Criminal Appeal. Serjeant Sullivan had some cases, but the Crown could counter these with others, notably that of William Cundell, in 1802, who was executed for adhering to the King's enemies outside the Realm. What was lawful for Cundell was lawful for Casement. The other consideration, which was fatal to the Serjeant's contention, was this ; he asked the Court to construe the Statute as if they were reading it for the first time ; but this meant in effect the brushing aside of the opinion of Coke, Hale and Hawkins, who had considered the meaning of the Statute extra-judicially. On this point the following dialogue took place :

DARLING : Did Lord Coke only go wrong about the law of treason or are his other conclusions wrong ?

SULLIVAN : Some of them. It is as impossible for a man to be always wrong as it is for him to be always right.

DARLING : Many Judges have ascertained that for themselves.

On this point, Darling quoted Best, C.J. in his judgment: " I am afraid we should get rid of a good deal of what is considered Law in Westminster Hall if what Lord Coke said, without authority, is not Law. He was one of the most eminent lawyers that ever presided as a Judge in any Court of Justice, and what is said by such a person is good evidence of what the Law is, particularly when it is in conformity with justice and common sense." Darling then went on, " If one wanted an opinion of a person who was not a lawyer, one with whom I dare say Serjeant Sullivan at all events is perfectly familiar, it is where this same Lord Coke is alluded to by John Milton as one who

> . . . on the Royal Bench
> Of British Themis, with no mean applause
> Pronounced, and in his volumes taught our laws
> Which others at their Bar too often wrench.

The combination of Chief Justice Best and Milton was too much for Serjeant Sullivan, and Lord Coke's view prevailed with the Court. But the Serjeant had one other ally of whose existence he was unaware. Darling received a telegram from an Ulster poet with the following message :

> " I will be unable to ascribe my three-hundred-line Lifeboat Poem to King George if Sir Roger Casement is given other than confinement."

Darling was much amused by this effort to dictate the course of justice, but managed to retain his customary impartiality in the face of this threat.

The War brought cases to the Courts which were less directly the consequence of it than Casement's treason, but which resulted from the changed conditions brought about by it. It was perhaps inevitable that one of the domestic effects of the carnage overseas was an involuntary cheapening of the account in which human life was held by some of the less responsible of the population. There grew up, too, doctrines such as that known as the " unwritten law," and the excuse afforded by irresistible impulse or the *crime passionnel*. All these ideas were foreign to English Law, and a duty fell upon our Judges to keep the administration of English Law free from such alien influences. In some cases the immediate result might seem a little hard on the individual concerned, but there is no doubt that the firmness of the Bench did great service to the cause of Justice in the long run. Darling's long experience of the Bench, fortified by the instinctive Conservatism of his mind, made him especially suspicious of the heresies in the conduct of Law. He took the view that if the gateway were once opened to the intrusion of such elements, the force of precedent would necessarily be so weakened by this intrusion upon its territory that it would never be able to regain the ground that was lost.

Of the murders tried by Darling, which exemplified these tendencies, two came before him in one week, in January, 1918. They were the cases of Lieutenant Charles Aughet, a Belgian, and Louis Voisin, a French butcher. Aughet was charged with shooting and wounding another Belgian subject, de Dreyver, with intent to murder him. The case belonged to the class which

commands a good deal of sympathy, as de Dreyver had been carrying on a love affair with Aughet's wife while Aughet was on active service. The shooting had taken place at the offices of the Belgian Government, at India House, in Kingsway. The offence, therefore, came within the jurisdiction of the British Courts. There was, however, a convention between the allied countries of Great Britain, France and Belgium whereby a soldier of any of those countries who was engaged in operations of war should be handed over for trial to his own country wherever the offence might be committed. Aughet had, in fact, been handed over and tried by a Belgian Court Martial. There he raised the defence that he had shot de Dreyver because he was afraid that when de Dreyver put his hand to his pocket it was to draw a pistol to shoot him. The Belgian Court Martial accepted this defence and acquitted him.

Now, it is the Law of England that no man may be convicted twice of the same offence. Consequently, when Aughet was charged in London he was advised by Mr. Hawke, K.C. (subsequently Mr. Justice Hawke) and Sir Archibald Bodkin, who represented him to plead *autrefois acquit*, as it is called. The defence argued that acquittal by a court of competent jurisdiction in this country or abroad formed an absolute bar to any subsequent trial for an offence founded on the same facts. The prosecution contended, on the other hand, that even though the crimes were called by the same name, an acquittal on the one would not be a bar to a trial on the other if the constituent elements were not the same. The point Darling had to decide therefore was whether Aughet had to stand his trial in this country or whether his Belgian acquittal exempted him from that unpleasant necessity. Darling pointed out to Sir Archibald Bodkin that the defence of a person being compelled by a force he is unable to resist, which constituted the grounds of the Belgian acquittal, was one not recognised in English Law. A little later he remarked : " It is suggested that English Judges should know all about Belgian Law ? Some of us don't know all about English Law. Lord Coke once said that he knew all about English Common Law but nothing about Statute Law."

On the point of the " irresistible force " Darling directed the Jury as follows : " the accused relied on that clause of the Belgian Penal Code which declares that there is no breach of the law when a person is constrained by a force to which he can offer no effective

resistance. What that force is I do not know. It would appear to be simply the force which compels all people who are in their senses and who commit crimes. It used to be alleged in the old English Indictments that the Devil counselled him to do these things and by the Law of England if a person yield to that counsel he commits an offence. The Belgian Law seems to be otherwise."

He directed the Jury that the plea of *autrefois acquit* applied to the other charges but not to that of unlawful wounding. On that charge therefore he could stand his trial. Ten days later Aughet came up on this charge at the Old Bailey before Sir Henry Dickens, the Common Serjeant. Sir Henry was less sympathetic to "irresistible force" than the Belgian Court Martial, for in spite of a strong recommendation to mercy by the Jury on the grounds of the provocation which he received (amongst other things de Dreyver had told Aughet that he was the father of his wife's child) Sir Henry sentenced him to five months' imprisonment.

The case of Voisin and Roche showed that ideas of violence were not confined to individuals who were themselves connected with the prosecution of war. In this case Voisin and Berthe Roche were put on their trial for the murder of Emilienne Gerard. Both the accused and the victim, who had been housekeeper to Voisin, were French and it was fortunate that the case was tried by a Judge with a good knowledge of French, for Voisin, although he had been in England since 1913, did not speak English and understood it but imperfectly. He did not give evidence, but read a statement from the dock through an interpreter. On the last day of the trial he put in a second statement, which Darling read aloud translating as he went. The murder was one of extreme brutality, and Voisin had put into use the technical training acquired by him as a butcher.

It is unnecessary to discuss here the details of the crime and the steps by which the prosecution proved it against him. The dead woman was shown to have lost at least two pints of blood before death, and the kitchen at Charlotte Street was covered with numerous blood stains. This, in Darling's view was a crucial point of the case. Voisin's explanation that he had brought home a calf's head in the way of his business would no more account for that than if he had explained it by saying he had brought home a sack of apples. The case of the woman prisoner was rather different, as it rested chiefly on the fact that a large number of feeble blows had been directed

against the victim, which it was suggested were incompatible with Voisin's temperament and professional technique. Darling directed the Jury that there was no evidence of murder against her, though there was plenty of evidence as to her being an accessory after the fact. He therefore discharged her so that she could be tried on this count at the next Session. She duly appeared before Mr. Justice Avory and was found guilty and sentenced to seven years' penal servitude. The Jury had no hesitation in finding Voisin guilty of murder. Darling then sentenced him to death in French, and also in French told him that he had been found guilty on incontestable proof. He afterwards repeated what he had said, in English.

Two other cases which Darling tried in the following year involved the issue of insanity. This was a matter with which Darling was well familiar, for, as we have seen in earlier chapters, it was the defence raised in several of the murders in which he was engaged as counsel on the Oxford Circuit. It was a point, too, on which he held decided opinions, and he was implacably opposed at all times to any extension on sentimental grounds of the legal definition of insanity. There are those who take the curious view that anybody who commits a murder must necessarily be mentally deranged. It need hardly be said that this is not the view taken by the Law of England. Ever since McNaughten's Case in 1843, the Law of England has been that a person is insane who does not know the nature of the act which he is doing, or, if he does know, is so mentally deranged as not to know that it is wrong. Any weakening of this definition would have the effect of admitting the not infrequent type who commit a murder on a sane, if hasty impulse ; or even those, whom Darling knew to be not infrequent, who commit murder because the likelihood of advantage seems to outweigh the probability of detection.

In the case known as the Forest Gate Murders, which Darling tried in May, 1919, the accused man, Perry, alias Becket, was charged with the murder, partly from the motive of robbery and possibly also from the greed for blood, of no fewer than four people, a Mr. and Mrs. Cornish and their two daughters. The defence put up the plea of insanity and called Sir Robert Armstrong Jones, who gave evidence to this effect. He described how Perry had told him how he had been wounded in the head by shrapnel, blown up by high explosives, flogged on the feet and beaten over the head with

the butt end of a rifle by the Turks. He had dreams in which he committed horrible deeds in the presence of his mother and he constantly heard voices which had commanded him to do the murder. The Medical Officer at Brixton, however, did not consider him insane. He had appeared sane and collected at the time of making his statement, which was so circumstantial as to detail that he must have known all about the crime to be able to give so clear an account of it. He was a low type but not mentally defective. He was found guilty, and Darling had no commiseration for him, for he considered it the most horrible crime it had ever fallen to his lot to try.

The Tottenham Murder, which came before Darling in the same month, was less gruesome in its detail but more interesting as it enabled him to give some general observations on the position of the law of insanity. Arthur Pank, a soldier, was charged with the murder of his sister-in-law, and insanity was urged. Medical evidence showed that Pank had realised the seriousness of what he was doing, but had thought he was justified in acting as he did in order to defend his brother's honour. In his summing up, Darling enunciated the legal definition of insanity. "It is important," he said, "because there are no end of people now who are trying to trifle it away and allow persons in certain circumstances, and especially those in khaki, to kill others with little or no excuse. A man must be incapable of knowing that what he did was wrong. Take the case of Nurse Cavell. She undoubtedly assisted Englishmen and Belgians to escape from the Germans. According to the law at that time prevailing in Belgium, which was German Military Law, the Germans had a right to prevent people leaving the country. Nurse Cavell, knowing that she was breaking the German law, and knowing that if she did so she would run the risk of being shot, said she had a higher duty, and she did it and took the consequences. You may say, if you like, that she was justified in doing it, but she would not have said, and you must not say, that she was not doing wrong against the German law. She thought she was obeying a higher law—and we think so too. In this case the medical evidence says that the prisoner knew the nature and quality of his act; he knew that in ordinary circumstances it was wrong to shoot the woman, yet in the particular circumstances he thought that he was justified in doing it."

Pank, like Perry, was sentenced to death. But however much one may sympathise with returned soldiers, there is no doubt that any other sentence and any other interpretation of the Law could only have had a most unwholesome effect in providing a hope of exemption for others who might feel inclined to commit murder in similar circumstances.

CHAPTER XX

PEMBERTON BILLING AND THE BLACK BOOK

BY 1918 the mighty stream of War had overflowed into every corner of the earth. There were few parts, however remote and however peaceful in intention, which had not felt the impact of its rushing waters; there were none who had not heard with apprehension the echo of its beating. Across the world two rival powers stretched like two great octopuses, locked in conflict at every tentacle. On the Western Front humanity was piled up in sanguinary deadlock, in demonstration that the march of science has made impossible decisive warfare; but in other and less advanced parts of the world progress could be measured in victories and acquisitions instead of in the yards which measured the extent of the triumphs on the Western Front. In the far Eastern waters Japan expanded her dominion, the better to avenge the wrongs of Serbia; in near-eastern deserts the Arabs ambushed their Turkish over-lords by way of showing practical sympathy for gallant little Belgium. Russia had left the general conflict to become engaged in the more engrossing pursuits of internecine strife, the victim alike of autocratic incompetence and the theories of the German Jew; but her place had been taken by the United States, the pressure of whose enormous accumulated reserves of wealth more than compensated for the ill-equipped and unenthusiastic hordes which had constituted the Russian "steam-roller."

But it was not alone the combatants and equipments of war that were changed. The very spirit of its waging had undergone a transformation. The gaiety, the enthusiasm, and the confidence of the early days were gone; gone too was the moral fervour of the crusading spirit. They could not survive the discovery that so often the enemy were better and more likeable than their own allies; the realisation that nothing ever happened except increasing hardship and the death of their comrades-at-arms; the suspicion that the War was being prolonged by the incompetence, if not the venal interest, of some of those at home. The War, which had been to some a crusade, to others a gay adventure, was become a curse on

the earth ; but men went on, impelled by that anonymous but potent imperative, which makes men resolute to do their duty. Such were the conditions, and such was the temper, on the exalted planes of sacrifice.

But what of the valleys below, where dwelt those who stayed at home ? They were safer, indeed, and more sheltered, but their view was obscured by the very thought of their own impotence. For them, too, the War was changed. No longer was the exercise of patriotic endeavour a cheerful stimulant to civilian life ; no longer was the news from the battle fronts a more exciting variant of the news of the pre-war political and Home Rule struggle, to be eagerly canvassed in the committee of one's friends. Indignant and elderly spinsters found that conscription had diminished the field of the exercise of their activities with white feathers ; the rationing system, by its regimentation of scarcity, had taken the virtue from self-denial. What was there left for a civilian people to do save that which they had condemned in their leader ? Must they do nothing but just wait and see ?

At home, as in the theatres of war, the conflict seemed interminable. The British people, unmindful of the fact that it had taken twenty years to defeat Napoleon, remembered only the assurances that the war was to be over by the Christmas of 1914, and the incontrovertible proofs of Liberal professors that in modern economic conditions the War could not last six months. But nearly four years had gone by, and still Victory seemed as far off as ever ; for it was unthinkable that there could be any other end to the War save Victory. And then, in the Spring of 1918, came what was subsequently to be known as the last great German offensive ; though at the time it seemed as if it might be only the first of a series of such assaults. Could the nation and its forces stand firm ? Or was it conceivable that victory was to be denied them, and that the country was to endure the bitter humiliation and untasted horrors of defeat ? The mind of the people became darkened with doubt. Would the war never end ? And would victory never come ? What was delaying it ? It could not only be the valour and resolution of a great people, bravely hiding their own difficulties which were of a character even more intense and compelling. Could it be that there were forces at work which were preventing the best utilization by this country for victory of those forces at its command ;

could there be treason in high places ? Could there be corruption and defeatism ? Stories were produced in incredible profusion, and circulated with equivalent rapidity. Some had a basis of truth in varying degrees, others had none ; but all received a measure of credence, for in those days Rumour had but to speak and Confirmation was at hand to nod its head. The English tradition of solidity of temperament did not entirely fail it, but the note of hysteria was clearly to be detected. A great nation, unused to such suspense had been tried almost to breaking point, and an entire people was living on its nerves.

There were some who felt that at such a time as this every waking moment should be devoted to the prime necessity of the prosecution of the conflict. There were others who extended into the sphere of art the application of the slogan " business as usual," so popular at the beginning of the War. They felt that if civilization was to be saved, it was necessary to maintain the arts so that there should be something worth saving. The others thought that there were some forms of art the presentation or development of which could not but detract from the successful prosecution of the War. In this difference of view there were sufficient points of variance to provide material for a conflict. And it was out of such a conflict that arose the Pemberton-Billing trial, which in its attendant circumstances and its method of procedure was unlike any previous case in the Courts, and is unlikely to find its parallel, at any rate until similar conditions should reassert themselves.

Noel Pemberton Billing was one of the extreme patriotic school who advocated a more vigorous conduct of the War. He was a brilliant man in the late thirties, with certain eccentricities. Tall and good-looking, he used to wear a long pointed collar without the usual companionship of a tie. But for all his eccentricities he was undeniably a versatile and accomplished man. He was an airman and an inventor, with numerous devices to his credit, many of them in connection with aircraft. He was also a man of considerable eloquence, with a flair for the public presentation of his ideas. With all this equipment he had recently entered the House of Commons as the Independent Member for mid-Hertfordshire, elected as an apostle of a larger air force and more vigorous prosecution of the War. He was one of those who believed that the efficient conduct of the War was being impeded by unpatriotic or irresolute forces at home.

To further his views he founded, in October, 1916, a weekly newspaper called the *Imperialist*. In his initial editorial Mr. Pemberton Billing stated that " in its columns week by week I intend not only to criticise but to attack, without fear or favour, all those men and measures which make for the perpetuation of our past political follies " : he was as good as his word. Rather less than a year later, a society called the Vigilantes was formed with the object of promoting purity in public life, and the *Imperialist* became its organ. On February 9, 1918, the paper changed its name to the *Vigilante* in order to mark its association with the society.

Before the paper changed its name, however, information was conveyed to Mr. Pemberton Billing of the famous Black Book, a book supposed to contain the names of 47,000 prominent British citizens whose sexual vices were known to the Germans, in whose bondage they therefore were. In Mr. Pemberton Billing's own words : " there exists in the *cabinet noir* of a certain German Prince a book compiled by the Secret Service from the reports of German agents who have infested this country for the past twenty years. . . The officer who discovered this book while on special service briefly outlined for me its stupefying contents. In the beginning of the book is a précis of general instructions regarding the propagation of evils which all decent men thought had perished in Sodom and Lesbos. . . More than a thousand pages are filled with the names mentioned by German agents in their reports. There are the names of 47,000 English men and women. It is a most catholic miscellany. The names of Privy Councillors, youths of the chorus, wives of Cabinet Ministers, dancing girls, even Cabinet Ministers themselves, while diplomats, poets, bankers, editors, newspaper proprietors, members of His Majesty's Household follow each other with no order of precedence. . . The thought that 47,000 English men and women are held in enemy bondage through fear calls all clean spirits to mortal combat. There are 3,000,000 men in France whose lives are in jeopardy, and whose bravery is of no avail, because of the lack of moral courage in 47,000 of their countrymen, numbering in their ranks, as they do, men and women in whose hands the destiny of this Empire rests. . . The story of the contents of this book has opened my eyes, and the matter must not rest." It was shortly to be galvanized into a form of activity quite unexpected.

At the very time these exciting revelations were being made to

the faithful of the Vigilantes, there was a considerable activity in the world of Art. Mr. J. T. Grein, famous dramatic critic of Dutch extraction, resolved to give a performance of Oscar Wilde's *Salome*, for the members of his Independent Theatre. Now this was very exciting news in the theatrical world, for though it had been produced on the Continent, it was under the Lord Chamberlain's ban in England and therefore ineligible for public presentation. The theme of the play was Wilde's idea of the motives that animated Salome, who danced before Herod and demanded from him as a reward the head of John the Baptist. Nothing is said in the Bible story as to her feelings, so Wilde had a free hand ; he made the most of it, describing in language of exaggerated and often nauseating exoticism the love of Salome for John the Baptist, his spurning of her love, her demanding of his head in revenge, and the passionate kissing of his lifeless lips in triumph. It can be seen, therefore, that the members of Mr. Grein's Independent Theatre were in for a treat. But the best part of the treat was to be in the playing of the title-rôle, for which Mr. Grein succeeded in getting no less distinguished a lady than Miss Maud Allan, the famous classical dancer, who had already provided something of a sensation by dispensing with some of the clothing then considered to be indispensable to stage performances. Miss Allan had previously danced Salome's Dance of the Seven Veils, but this was to be her first speaking part on the stage. The proceeds, after expenses paid, were to go to the Y.M.C.A. or the Red Cross. Mr. Grein issued a circular containing the details of this attractive occasion and concluding " I am confident that the interest of these productions will bring a wide response." His confidence was not misplaced, but the nature of the response was a little unexpected.

The arrangements of the play came to the notice of the Vigilantes, and the first issue of the new-named paper contained a paragraph under the heading " the cult of the ——s "* Under this provocative heading appeared this brief paragraph : " To be a member of Maud Allan's private performances of Oscar Wilde's *Salome* one has to apply to 9, Duke Street, Adelphi, W.C. If

* The heading of this passage is for obvious reasons not here reproduced in full. It is necessary to refer to it however, as it contains some of the sting of the libel, and to explain that the heading in full constituted a reference to sexual perversity.

Scotland Yard were to seize the list of these members, I have no doubt they would secure the names of several thousand of the first 47,000." It was not long before this startling passage was brought to the notice of Miss Allan and Mr. Grein, who were not unnaturally very angry and affronted by its contents. Equally obviously Miss Allan decided to seek some remedy against the publisher of the offending passage. Now libel gives rise to a civil action for damages ; but it also in certain circumstances gives ground for criminal prosecution. This libel, if libel it was, was sufficiently grave to justify criminal proceedings. Therefore Miss Allan and Mr. Grein decided to bring a criminal prosecution against Mr. Pemberton Billing. Such a prosecution, it should be understood, was a private prosecution and not a Crown Prosecution conducted by the Director of Public Prosecutions. By the Newspaper Act of 1888, a private person wishing to prosecute a person for publishing a libel must first get the consent of a Judge of the High Court to the prosecution. The first step, therefore, for Miss Allan and Mr. Grein was to go to the High Court with sworn affidavits. Mr. Justice Salter gave them leave to proceed. Mr. Pemberton Billing was in consequence brought up at Bow Street, where, after hearing the evidence, Sir John Dickinson committed him to take his trial at the Old Bailey before Mr. Justice Darling.

Meanwhile a mass of information of the most startling character was daily pouring in to Mr. Pemberton Billing. He decided to plead justification to the charge, and also to run his defence on very broad and general lines. Although he had the advantage of legal advice before the actual trial, it was decided that in the quite exceptional circumstances of the case it would be best if he conducted his case in person. His particulars of justification said, " The tragedy, *Salome*, is a stage play by one Oscar Wilde, a moral pervert, is an open representation of degenerated sexual lust, sexual crime, and unnatural passions and an evil and mischievous travesty of a biblical story. . . The German Authorities in furtherance of their hostile designs upon this country have for some years past, by means of spies and secret agents and otherwise, compiled a list of men and women of various social, political, financial and other positions with a record of their moral, sexual and other weaknesses, and with all information procurable concerning them, which would render such persons easy victims of pressure and enable them under fear and threat of exposure

to be forced into courses of conduct agreeable to Germany. The said list comprised the names of 47,000 people or thereabout, and the textual presentation by anyone of the said tragedy *Salome* would particularly attract many of the people whose names appeared on the said German list. And Noel Pemberton Billing says that it was for the public benefit that the defamatory matter charged in the indictment should be published by reason of the fact that the textual presentation of such a play by any person or persons whatsoever would be highly deleterious and prejudicial to public morality and to the interests of purity in the public life of this country generally." The stage was fairly set for the great performance.

When Darling took his seat at the Old Bailey on May 29, the forces as he surveyed them appeared at first unequally matched. The Prosecution was led by a strong team of counsel consisting of Mr. (later Sir Ellis) Hume-Williams K.C., Mr. (later Mr. Justice) Travers Humphreys, and Mr. Valetta. Mr. Pemberton Billing, tall, lean and arrogant, chose to defy this array of forensic talent in person. But he had the support of a variety of witnesses, many of them doctors who had come to give evidence as to the perversity of *Salome*; he had, too, the energetic support of a crowded gallery which became more vocal and unrestrained as the case quickened its astonishing tempo. Before the case had run very long there were crowds outside the Old Bailey, enthusiastic in their support of the accused; they but reflected the interest of the public, in whose newspapers the War had yielded the headlines to this astonishing trial. But greatest of Mr. Pemberton Billing's allies, though unseen, was the temper of the times; a feeling of strained uneasiness, anxious and suspicious, ready to react to the dramatic and the violent.

The case had not been in progress two minutes before Mr. Pemberton Billing gave an example of the shock tactics that he was to pursue throughout the case. He rose and made a protest against the case being tried by Darling, whose levity in trying cases, he said, he had frequently criticised in the Press and on the platform. Darling, however, cut short his protest by assuring him that he had never seen any such protest, and continued: "The fact that you may take an unfavourable view of me can be no reason why I should not try your case: because by the same process you might exhaust every Judge upon the Bench. People cannot choose the Judges who should

try their cases, and they certainly cannot exclude a Judge by writing about him beforehand."

This preliminary point having been decided, Mr. Hume-Williams proceeded to open the case for the Prosecution. He outlined the story of the play *Salome*, and explained the meaning of the libel, of which he said " there could not be a more cruel, a more offensive or more gross libel " : he also opened in some detail the question of the Black Book and the 47,000—a circumstance not without its importance on Darling's handling of the case. Miss Allan then gave evidence and said, in answer to a question as to whether she was dependent upon her professional earnings, that she would continue doing her work as long as it gave her pleasure, although she had private means. " Many people continue to work after they had earned their pension," said Darling with a smile, for he had long ago earned his. It was not a case, however, into which a pleasant atmosphere could be infused, and perhaps the most unpleasant part came with the opening of Mr. Pemberton Billing's cross-examination of Miss Allan. He questioned her about a most distressing episode in the life of her brother. He was enabled to do this on the ground of showing that certain tastes and weaknesses may be hereditary in character, and it was not open to Darling legally to exclude the question. The revelation naturally exercised a profound effect, and it changed the atmosphere of the trial so as to make it appear that it was Miss Allan who was on the defensive. Mr. Pemberton Billing pressed home his advantage, but she was a spirited witness as well as an artist. " You have had a series of rebuffs in this country ? " asked Mr. Pemberton Billing.

" None at all that I can make out."

" Have you never been forbidden to appear in *Salome* ? "

" At Manchester," came the quick reply. " Even politicians receive rebuffs there."

He then proceeded to go through the play in detail, putting to Miss Allan the perverted and symbolic interpretation. Darling, who, as has previously been noticed, was no admirer of the works of Oscar Wilde, found *Salome* an exceptionally tiresome piece of writing. When Mr. Pemberton Billing asked leave to read a certain passage in detail he consented, " Only because it is short—I am so sorry it has no other merit." Passages such as this were read :

" Wherefore doth she look at me with her golden eyes under her

gilded eye-lids." Or again: "Thy hair is horrible, it is covered with mire and dust. It is like a crown of thorns which they have placed on thy forehead. It is like a knot of serpents writhing round thy neck. I love not thy hair. It is thy mouth that I desire, Jokanaan. Thy mouth is like a band of scarlet on a tower of ivory. It is like a pomegranate cut with a knife of ivory."

Of passages such as this Darling said: "I do not see where the art is. Of course, I cannot understand it." Another passage referred to Jokanaan's mouth as "redder than the feet of him who cometh from a forest where he has slain a lion and seen gilded tigers."

"Gilded tigers?" asked Darling despairingly.

"Gilded tigers," was the response.

"Go on," said Darling with resignation.

Mr. Pemberton Billing occupied the afternoon of the first day putting such passages as these to Miss Allan and concluded by asking her whether she thought such performances would tend to raise the moral tone of the country.

Mr. Hume-Williams then announced that that concluded the case for the prosecution, and Mr. Pemberton Billing expressed his surprise that Mr. Grein had not been called to give evidence. Darling pointed out to him, however, that at the moment he was being tried only on the indictment that charged him with libelling Miss Allan, not on that which charged him with libelling Mr. Grein. The case was then adjourned at Mr. Pemberton Billing's request, in order to give him a chance of reconsidering his position.

On the following morning he opened his case to a crowded court in a short but rhetorical speech. "Either," he said to the Jury, "you are going to say that it is in the public interest that beastly trash of this description should not be allowed to appear or, despite the decision of the Censor and despite the decision that for twenty years this play was never allowed to be put on the stage, you as twelve British Jurymen are going to give that play a licence, and assist in the propaganda and the spreading of evils, which in my own words, all decent men thought perished with Sodom and Lesbos."

Having announced that he did not intend to give evidence himself, he called as his first witness Mrs. Eileen Villiers Stuart. There stepped into the box a sprightly and attractive young lady, who was to reappear at the Old Bailey a few months later in rather a different capacity, to receive nine months' imprisonment for bigamy.

Mrs. Villiers Stuart promptly proceeded to give evidence of the famous Black Book, which she said she had seen. At once there arose a difficult point. It is a salutary rule of evidence that evidence may not be given of the contents of a document, unless that document is itself produced. In this case, however, the defence stated that they were unable to produce the book to the court since it was in the possession of Prince William of Wied, a German who had become King of Albania. Now the rules of evidence allow oral, or secondary, evidence to be given of a document which cannot be produced because it is in the custody of an alien enemy. That is why, in this case, Darling allowed the defence to give evidence of what was alleged to be in the book, without the book itself being available for the inspection of the court.

Mrs. Villiers Stuart gave evidence that she had been shown the book by two politicians, since killed in action. This vivacious lady had not been long in the box before a brisk squall arose. Mr Pemberton Billing asked if her life had ever been threatened in connection with the case. On her replying that it had, Mr. Hume Williams asked what that had to do with the case ?

" Nothing at all," said Darling. " You know, Mr. Billing, I have allowed you a good deal of latitude but you are putting questions which I should not allow any counsel to come near putting. If you undertake to conduct your own case, you ought to know you must conduct it according to the ordinary rules of evidence."

" I know nothing about evidence," replied the unabashed Accused, " and I know nothing about Law."

" You cannot come into this Court and say that because you do not know the Law you may put any questions you like. I only tell you that any questions which are not such as can be put according to the rules of evidence I am bound to reject and I ask you to try and put only such questions."

Here the Accused made a dramatic interruption.

" Is Mr. Justice Darling's name in that book ? " he shouted to the witness.

Above the gasp of astonishment which followed this question Mrs. Villiers Stuart was heard to reply : " It is, and that book can be produced."

Darling remained unmoved. " It can be produced ? " he asked simply.

" It can be produced," shrieked the witness in reply, " it will have to be produced from Germany, it can be and it shall be. Mr. Justice Darling, we have got to win this war, and while you sit there we will never win it. My men are fighting, other people's men are fighting."

Mr. Pemberton Billing recalled the excited lady to the matter in hand. " Is Mrs. Asquith's name in the book ? "

" It is in the book."

" Is Mr. Asquith's name in the book ? "

" It is."

" Is Lord Haldane's name in the book ? "

" It is in the book."

Here Darling intervened. " Leave the box," he said sternly.

" You daren't hear me," screamed the witness.

Darling turned to Mr. Pemberton Billing. " Have you finished asking questions of that kind ? "

" I have not."

" Then if you are going on asking questions of that character I tell you to sit down because they cannot be asked. I have not the least objection to your having asked the one regarding myself, but I am determined to protect other people who are absent. . . . Now will you resume your examination please and remember what I have said."

" Do you propose to go on trying this case, my Lord ? "

" Resume your examination."

The examination was resumed, but not for long, for witness, Accused and Judge were soon in tripartite conflict again. Mrs. Stuart was asked whether a woman whom she had named was a woman of good or bad reputation ?

" You cannot ask that," said Darling ; " and what puzzles me is how women of good reputation know women of bad reputation."

" A lot of things must puzzle you, my Lord," replied the witness pertly. " It will take more than you to protect these people, my Lord," added Mr. Pemberton Billing, and Mrs. Stuart echoed emphatically that it would. Darling told her that if she did not conduct herself properly there would very soon be an end to the case altogether, but she shouted back : " When you are evicted I will carry on." At this Darling ordered her to stand down from the box, and told Mr. Pemberton Billing to call his next witness.

The next witness was a Captain Spencer, who related how he had been shown the Black Book by Prince William of Wied, and gave details as to its shape and size. Unlike the previous witness, however, he showed a certain reluctance to mention the names in the book, but ultimately stated that the names of Mrs. Asquith and Lord Haldane were in it. In other respects his evidence took a not dissimilar course, for he was soon at odds with the Judge. When he was told by Darling that he could not give hearsay evidence he said : " That may be the Law, but there is such a thing as Justice."

" Law is justice," replied Darling. " Don't be impertinent. You are not here to alter the laws of England. The laws of England are not to be altered for you to say what you like about a number of persons because you choose to do so."

Mr. Pemberton Billing, too, was in frequent conflict with the Judge. On one of his many inadmissible questions Darling told him that he ought to know by this time that it was not a proper question to ask. " I am learning, my Lord," said the Accused. " Very slowly, Mr. Billing," replied Darling.

A little later he took occasion to inform Darling that he hoped that he, Darling, would serve his country as well as Captain Spencer had done. When told to control himself, he replied that the Judge made it very difficult. Some of Captain Spencer's evidence related to passages in the play which he considered perverse. Mr. Hume-Williams objected on the grounds that it was expert evidence, only to be met with Darling's remark : " There can be no expert evidence on what is vicious conduct."

In the afternoon and on the following morning Captain Spencer was cross-examined at length by Mr. Hume-Williams, not a little of the cross-examination being devoted to the condition of his mental stability. He, too, indulged in impertinence to counsel, as when he asked Mr. Hume-Williams whether he was asking a certain question on behalf of the Germans. But on the whole he remained substantially unshaken in his account of the Black Book.

On the third and fourth days of the trial, that is to say, on the Friday and Saturday, Mr. Pemberton Billing produced his expert evidence with regard to the play. There was Doctor Serrell Cooke, who said that the play was full of all sorts of perverted sexual conditions, although a healthy person would simply throw it down in disgust and probably would not understand it. Sir Alfred Fripp,

the distinguished surgeon, followed Doctor Cooke into the box. After spending some time in a vain effort to persuade Darling to allow him to tell the Court why he had come forward to give evidence, Sir Alfred announced that he had neither seen nor read the play; accordingly, as he could give no evidence that was admissible, Sir Alfred left the box very promptly and with less ceremony than he had entered it. Mr. G. E. Morrison, dramatic critic of the *Morning Post*, compendiously described the play, which on the whole had rather bored him, as a "melodrama of disease." Father Bernard Vaughan, who gave evidence on the Saturday, started in trenchant vein: "I should not like to trust myself to speak as a priest about this abomination, which I look upon as constructive treason against the majesty and sanctity of God. But I will speak as an Englishman, as a patriot who loves his country, and wants to see——" What Father Vaughan wanted to see was never divulged for he was interrupted. "You are here as a witness," Darling reminded him gently. "You may say all this tomorrow (*i.e.* in the pulpit) but at present you must wait until some question is put to you relating to this play." At the conclusion of his brief evidence Father Vaughan announced that he found it very difficult to do right in the witness box, and apologised to the Judge. On receiving his reassurance he said: "I have tried to do my little bit," and abandoned the witness box for his more familiar station in the pulpit.

The most exciting evidence of the Saturday, however, was given by Lord Alfred Douglas, who thus once again found himself before Darling in a Court of Law, though this time in the capacity of witness and not as a party. The case of *Douglas* v. *Ransome* was in his mind, however, and the letter he had written to Darling on that occasion. He was not, therefore, in the most tractable frame of mind at the start, nor was the atmosphere in which the proceedings were being tried likely to exercise a restraining effect upon him. He gave evidence that he had translated the play into English from the French edition in which it originally appeared. The operation was something of a farce, as Wilde had actually written it in English to start with, then translated it into French, and got a French author to correct the mistakes; he then asked Lord Alfred to translate it back. However, it meant that Lord Alfred had been in close touch with Wilde at the time when he wrote the play, and was

therefore in a position to give evidence as to whether Wilde had intended reference to perversion in the play. All went fairly smoothly during his examination in chief, with only one brush with Darling on the subject of the admissibility of evidence.

But the storm blew up immediately Mr. Hume-Williams began his cross-examination. He started by putting to Lord Alfred the famous letter written by Wilde to him in 1893, starting : " My Own Boy," and saying your " slim gilt soul walks between passion and poetry," and expressing other sentiments of a similar nature. Lord Alfred instantly protested against this " bestial drivel " being brought up and Mr. Pemberton Billing interjected, " Why do they want to drag this muck up ? "

" It is hardly for you to protest against the past of a witness being called up," Darling pointed out, reasonably enough.

" When a man comes forward and makes a confession in the box in the public interest, it is not right to bring these things up."

" If you interrupt you can leave the Court during the cross-examination."

" As you please."

" Neither you nor anybody else is entitled to interrupt improperly. If you do so I shall exclude you from the Court, and you will come back when you are entitled to do so."

Mr. Pemberton Billing's position being thus settled, Mr. Hume-Williams was free to read the letter to Lord Alfred, whose comment was : " It is a rotten letter written by a diabolical scoundrel to a wretched silly youth, which Mr. Hume-Williams should be ashamed of bringing up."

" You are not here to comment on counsel," said Darling severely.

" I shall answer the question as I please," was the excited reply. " I came here to give my evidence. You bullied me at the last trial ; I shall not be bullied and brow-beaten by you again. You deliberately lost me my case at the last trial. I shall answer the questions as I choose, and not as you choose. I shall speak the truth."

" What you shall not do is to make rude speeches, or you will be removed from the Court."

" Let me be removed from the Court ; I did not want to come here to be cross-examined to help out this gang of scoundrels they

have at the back at them. If you are taking down a note of anything I said, take down all I have said."

At this there was some laughter in the Court, and Darling threatened expulsion from the court for anybody behaving in a disorderly manner, before assuring Lord Alfred that the shorthand writer of the Court took down every word of the proceedings—adding significantly, " whether it is relevant or not."

Mr. Hume-Williams then resumed his cross-examination as to Lord Alfred's credit. " When did you cease to approve of sodomy ? "

" When did I cease to approve of sodomy ? "

" Yes, that was the question."

" I do not think that is a fair question. It is like asking when did you leave off beating your wife ? It is simply a catch question."

It will be observed that Lord Alfred's tactics took much of the sting out of Mr. Hume-Williams's effort to discredit him. He freely admitted his folly, but pointed out that it had all happened a quarter of a century ago. His evidence as to Wilde's perverse intentions in the writing of *Salome* lost none of its weight by reason of his close association with Wilde at that time.

When the case was resumed on the Monday, Mr. Pemberton Billing took the unusual, though by no means unprecedented, course of calling Mr. Grein as his witness. Here, however, his lack of legal knowledge quickly got him into trouble, for he promptly started to cross-examine Mr. Grein. Darling pointed out to him that he had called Mr. Grein as his own witness, and therefore must confine himself to the questions which it is proper for a litigant to ask his own witness, and to refrain from cross-examination. On hearing this Mr. Pemberton Billing said : " The laws of evidence are beyond me, my Lord ; " and with the assertion of this self-evident truth resumed his seat.

His next witness was Mr. Beamish, treasurer of the Vigilantes. After him Mrs. Villiers Stuart again took her place in the witness box to conclude her evidence before counsel addressed the Court. This engaging lady quickly succeeded once more in adding to the interest of the proceedings. " Did you take any steps," asked Mr. Pemberton Billing, " to put this knowledge (*i.e.* of the Black Book) before any public person in this country ? "

" I did."

" Was he a prominent public man ? "

" You may ask his name," said Darling.

" Mr. Hume-Williams," said Mrs. Stuart, and electrified the Court as she indicated the leading Counsel for the Prosecution, to whom she said she had communicated her information at a flat in the Albany. On this story she was cross-examined by Mr. Travers Humphreys, as Darling indicated to Mr. Hume-Williams that he thought it better that he should not cross-examine on the matter, on which he might want to make a personal statement. The beginning of Mr. Pemberton Billing's re-examination was marred by another unfortunate clash.

" Did you hear Mr. Hume-Williams tell counsel to leave her alone just now ? " asked Mr. Pemberton Billing.

" I do not understand what this gentleman means," said Mr. Hume-Williams, " I made no such remark as ' leave her alone.' " Then turning to Mr. Pemberton Billing he added, " It is an absolute lie. It is not the first you have told."

Mr. Pemberton Billing promptly took up the challenge : " In a Court of Law you use legal methods. Outside you use others. If you call me a liar outside I will thrash you."

In this stormy atmosphere the giving of evidence, punctuated as it had been with incredible scenes, recurrent clashes, and not infrequent uproar, came to an end. It now fell to Darling to give a ruling as to what constituted the libel if any :

" I have no doubt that the Jury will have little difficulty in coming to the conclusion that, if this were an indecent play, if it were a play that ought not to have been played at all, then if it were a Lesbian play, it would be to the public advantage that it should be denounced. But it is not for me to rule that. That is a question for the Jury to decide.

" But as to all this about Scotland Yard and the Forty-seven Thousand and the German agents and who may be on the list and who may not, I shall rule that that is absolutely irrelevant and immaterial in these proceedings, and no question will be left to the Jury about it, and I shall tell them not to consider it."

" Am I to understand," asked Mr. Pemberton Billing, " that I am not to be allowed to make any reference to the evidence which has been brought forward in connection with that book in my address to the Jury ? "

" I have said what I have said," replied Darling, " and it is very easy to understand. I don't suppose for a moment that I can keep you to the point in any way."

With which pessimistic presentiment he invited Mr. Pemberton Billing to address the Jury.

Mr. Pemberton Billing was nothing loth.

" I am a libeller," he said. " I have libelled public men for the last two and a half years. I have libelled them in the columns of the Press ; I have libelled them on public platforms ; I have libelled them in the House of Commons."

Darling's presentiment was justified for he repeatedly had to interrupt Mr. Pemberton Billing for referring to matters which were irrelevant or as to which there was no evidence. But it was a very effective Jury speech, and his reference to " this mysterious influence which seems to prevent a Britisher getting a square deal," touched the imagination of the Jury. " I ask you," he said in conclusion, " first and foremost not to say that this is a clean play, not to give a verdict in favour of it. I ask you to send me away from this place with the confidence that the verdict of twelve of my countrymen will give me to carry on the very heavy task which in the interests of my country I have seen fit to commence."

Great applause greeted his effort, and, the time being late afternoon, Mr. Hume-Williams was permitted to defer the opening of his speech until the following day. The next morning Mr. Pemberton Billing, who had been accommodated with a seat at the Solicitor's table from which to conduct his case, had returned to the dock. Mr. Hume-Williams's speech contained an attack on the way in which Mr. Pemberton Billing had conducted his case. He had conducted it in person, although he could well have afforded legal representation. " Perhaps it is not a bad plan . . . you will probably be able to impress the Jury, if only you do it well, with the fact that you have got a great grievance, and that you are a fit subject for their sympathy in your conduct of the case. It is a much better plan than having an advocate. You may be able to afford to pay, but it is much better to do it yourself ; and the first thing you have to do, if you want to make it effective is, if possible, to insult the Judge. It so happens that the Judge who is trying this case is the Senior Judge among the Common Law Judges of our country. For over twenty years his Lordship has been a Judge in

our land. It has recently pleased the King to make him a member of the Privy Council." Here Darling intervened with a smile: "I wish you would not allude to that," he said, "because Privy Councillors are particularly mentioned among the Forty-seven Thousand."

Darling then approached the difficult task of summing up. He told the Jury that he had held that if the second sentence of the libel, about Scotland Yard and the Forty-seven Thousand, had been left out of the indictment, there would still have been a case for libel to be considered. "If those words had not been put into the indictment (and I wish they had not) there would have been no question here about that Forty-seven Thousand; you would not have seen many of those witnesses who have been called before you; there would have been none of that about the Black Book, with the eccentric career of Captain Spencer or any of those things. The matter would have been a clear question. . . . I wish it had been so; and if I could have done so I would have kept it to that. But unfortunately these other lines about the Forty-seven Thousand and so on are in the indictment; they were mentioned in the course of opening the case, and therefore I could not exclude all that evidence with regard to the Black Book and Captain Spencer and his hallucinations and his treatment of one thing and another; I could not exclude it, although in my judgment it has nothing whatever to do with the libel upon Miss Maud Allan."

A little later on, Darling informed the Jury that they were absolved altogether from forming any opinion about the Black Book and the Forty-seven Thousand because in regard to that there was no libel upon Miss Maud Allan. With regard to her position, he stressed the fact that Mr. Pemberton Billing had definitely stated that he did not allege that Miss Allan herself had any connection at all with any of the practices mentioned in the case, and there could be no question of any such charge being brought against her. With regard to the play itself, he inclined to the view of the evidence that it was an obscene, indecent, and sadistic play.

It would be pleasant to be able to record that this summing up —and as usual with Darling it was not without its literary flavour, containing as it did quotations from Shakespeare and Edmund Waller—was listened to in silent attention; but unhappily such was not the case. The first disturbance came when Mr. Pemberton

Billing and Captain Spencer interrupted the Judge on a point of fact, and Darling ordered Captain Spencer to be removed from Court. But this was only the beginning, for later on Darling, a little upset by the unusual atmosphere, referred to Lord Alfred Douglas as the writer of the play, saying : " It is what Lord Alfred wrote, that is the sadist writing." Now what Lord Alfred in fact had done was to translate the play not to write it. Hearing, therefore, the authorship again ascribed to him in these terms he shouted out impetuously : " You have no right to say that I wrote it. You lie. You are a liar, a damned liar. If you say it outside the Court I will prosecute you." Tremendous cheering in Court greeted this amazing outburst, under cover of which Lord Alfred left the Court to avoid being ordered out. The damage was done, however, and the rest of the proceedings were conducted in an intermittent uproar. When Mr. Pemberton Billing interrupted, and was told that he was in danger of following Lord Alfred, loud hissing greeted this effort to maintain discipline. People had to be ejected from the Court one after another, including a funny little old woman with bonnet and parasol who panted triumphantly as the door closed behind her : " I told him what I thought, I told him what I thought."

A further element of comedy was introduced when a knock was heard on the door, which turned out to be Lord Alfred Douglas asking if he might recover his hat, which had been left behind in his unpremeditated exit. It was in an atmosphere such as this—of mingled chaos and comedy—that Darling finished his summing up, and told the Jury to consider their verdict.

The Jury were out for an hour and a half, and then returned with a verdict of Not Guilty. An immediate and prolonged outburst of cheering filled the Court as soon as the foreman's words were heard. The cheer was instantly taken up by the enormous crowd which thronged the streets outside the Old Bailey. It was redoubled as the prominent witnesses for the defence came out and were recognised by the crowd, and the cheering swelled into a tremendous ovation when Mr. Pemberton Billing finally appeared, free and triumphant. Inside the Court some minutes elapsed before quiet could be restored, and the Judge could attend to the business before him. Such was the end of the Pemberton Billing case.

It would be platitudinous to observe that the case was unique in the history of the Courts. It was not a case unique in only one respect: there was scarcely a feature in it that could find a parallel in the ordinary course of litigation. It is not surprising, therefore, that Darling has been subjected to much criticism for his conduct of it. He has been criticised for letting the proceedings get out of hand; for allowing Mr. Pemberton Billing to stampede the Court; for permitting the evidence to be given about the Black Book; for not giving people whose names were mentioned the opportunity of defending themselves; and for various other reasons, weighty or trifling. The answer to many of these criticisms is to be found in the history of the case as narrated in this chapter. Thus he could not exclude the evidence about the Black Book and the Forty-seven Thousand, as a reference to the Forty-seven Thousand was included in the libel appearing on the indictment, and was referred to extensively in Mr. Hume-Williams's opening. Further, it must be remembered that throughout his career as a Judge, Darling made it his custom to admit evidence in cases of criminal libel unless he was certain that it was irrelevant, because otherwise the exclusion of relevant evidence would be sufficient to justify the Court of Criminal Appeal in quashing a conviction, if a conviction there was. As to the names of people being introduced, there were occasions during the trial in which only the use of physical violence or the gag could have prevented the introduction of distinguished names. As to allowing people whose names were mentioned opportunities to appear and refute the suggestions made about them, the rules of evidence do not give any *locus standi* to people about whom there is no issue in the case, and Darling as Judge was of course bound by the rules of evidence.

As to the suggestions that he could have taken a firmer line with regard to Mr. Pemberton Billing and some of his witnesses, Darling often gave thought to this in later days. But his point in regard to it was that he was in a considerable difficulty because Mr. Pemberton Billing was conducting his case in person. Darling, as we have seen, made it his practice always to give a certain amount of latitude to litigants in person. In this case, had he committed Mr. Pemberton Billing, who certainly conducted his case with a breezy contempt for the rules of evidence and a singular lack of respect for the tribunal, there would have been nobody to conduct

the defence, and the proceedings would therefore have been suspended perhaps interminably. It was therefore a little difficult for him to resort to extreme measures. He certainly was not happy about his position, which he described as " hardly as happy as that of a referee in the ordinary game of football, because to make it an exact parallel the game of football would have to be played between two sides, with the Captain of the one team telling the referee that he knew nothing of the rules, and that when he mentioned what the rules were he did not mean to abide by them ; and to make the parallel complete, the Captain of the team would have from time to time to request the referee to order on to the ground someone who was not a player in order that he might kick him or her."

It was certainly a difficult and unpleasant position ; and Darling got neither pleasure nor prestige from the trial. In retrospect it is clear that he was not perhaps the best man for a case of that sort. Had it been entrusted to a man like Mr. Justice Avory or Lord Hewart (who was not of course at that time a Judge) it might have been more successfully handled. But people on the whole, and the legal profession in particular, were quick to recognise the unexampled difficulties and were generous in making allowance for them. A letter Darling received at the time from Mr. Atkin is typical of the views held by the profession :

The Savage Club,
Adelphi,
London, W.C.2.
4th June, 1918.

Dear Acting Lord Chief Justice,

There is no member of the Bar who does not deeply resent the insults offered to your Lordship at the C.C.C. and who does not also recognise the marvellous restraint exercised on that occasion.

I remain, with deep respect,
Very faithfully yours,
EDWARD E. H. ATKIN.

Chief of the difficulties was that imponderable referred to above—the temper of the times. At no moment of less acute crisis

in the fortunes of the nation could public feeling have expressed and communicated itself in the way that it did. That was Mr. Pemberton Billing's best ally. When people refer to the stolidity in crises of the English people they might give a thought to the trial of Mr. Pemberton Billing before Mr. Justice Darling in the summer of 1918.

Tempora mutantur ; nos et mutamur in illis.

CHAPTER XXI

THE MOND LIBEL CASE

THE Pemberton Billing trial was the most startling of the libel cases that were the outcome of the abnormal conditions of the War. But the conditions which gave rise to so much frenzied patriotism, such violent suspicion of the patriotism of others, and such hostilities within the country which common danger could not entirely compel into common unity, were productive, too, of other libel cases in which public men well known to the country, were plaintiffs. It fell to Darling's lot to try two of these in 1919. The first was the action brought by Sir Hedley le Bas against the *Daily Mail* and the other was the action brought by Sir Alfred Mond, later Lord Melchett, against Mr. Beamish.

Sir Hedley le Bas was a publisher who founded an organisation known as the Westminster News Agency. The object of the Agency was to supply the Liberal Press with matter of social and political interest for their comment. To further this objective a circular was sent out to the newspapers offering articles on such subjects by well-known writers. Unhappily, but perhaps not altogether incomprehensibly, the Press were somewhat tepid in their reception of this admirable idea. Sir Hedley then had the idea that perhaps the matter would seem more attractive to the papers if they were to be paid for the insertion of such articles. This new suggestion brought a welcome change in the attitude of the newspapers to the proposals, and they agreed to take them on these terms with the additional, if unflattering, provision that they should have the right to dissociate themselves from the views expressed. The articles soon began to appear under the signatures of such eminent journalists as Mr. Arnold Bennett, Mr. James Douglas and Sir Hedley himself.

Now these articles were appearing in the Spring of 1918, and were for the most part attacks on Mr. Lloyd George, who was no doubt—at any rate at that time—an object of both social and political interest. But the *Daily Mail* which at that time was strong in its

support of Mr. Lloyd George, was highly indignant at the tone and contents of the articles, and in May, 1918, attacked Sir Hedley in a series of articles. Their contention was that, as Sir Hedley had paid for the insertion of articles attacking the Prime Minister, they were in fact advertisements, disguised as editorial matter, and were therefore calculated to deceive the readers and induce them to take the articles as the opinions of the paper. " By a curious coincidence," said the *Daily Mail*, " Sir Hedley le Bas's opinions are also the opinions of the enemy . . . even the means by which he is pursuing his object have their encouraging approval." There followed in the article a quotation from the *Neue Freie Presse* which expressed the hope that Mr. Lloyd George's position might be " publistically " undermined. " There never was a clearer case of playing into the enemy's hands," said the *Daily Mail*, which also considered it the most reprehensible example of playing the enemy's game the War had revealed. They also quoted the poem written by a Mr. Richardson of the Aldwych Club, in which it was suggested that Sir Hedley should resign his Chairmanship on the grounds that he had brought discredit on the Club. The poem ran as follows :

> And if ye triumph then in that glad day
> Berlin shall hand ye bouquets : and the Hun
> Shall string his helmet up and shout hurray
> Over the victories that ye have won.
> So long as ye achieve a Party score
> What matter if we lose this petty war ?

As poetry, Darling had, not unnaturally, a poor opinion of this effusion, and suggested that the person who made score rhyme with war himself deserved some severe punishment. But the *Daily Mail* evidently preferred it to Sir Hedley's articles, and announced their intention of continuing their policy " of exposing a very mean and loathsome form of advertising."

Sir Hedley duly brought an action for libel, and by his pleadings claimed that the *Daily Mail* had accused him of having attempted to corrupt the press, of having aided the enemy, and of mean and loathsome conduct. He had as his counsel Mr. Douglas Hogg, K.C., subsequently Lord Chancellor, and Sir Hugh Fraser, the well-known authority on Libel. The *Daily Mail* relied on Mr. Rigby Swift, K.C., later Mr. Justice Swift, with Mr. Patrick Hastings

and Mr. Herbert Metcalfe, a future stipendiary Magistrate, as juniors. The defence denied that the words were defamatory, and pleaded justification and fair comment.

Mr. Douglas Hogg opened the plaintiff's case before Mr. Justice Darling on April 2, 1919, and said that the case had nothing to do with politics nor with the question whether Mr. Asquith or Mr. Lloyd George should be Prime Minister. To this Darling quietly interpolated : " Are these the only alternatives ? " Apparently in Sir Hedley's view they were not, for in cross-examination he said that, though his political sympathies were with Mr. Asquith, he was in favour of a dictatorship for the period of the War and would have suggested General Smuts as the most suitable person to discharge that office. He also admitted that a reader of the *Wigan Observer* would have no means of knowing that he, Sir Hedley, had paid Mr. James Douglas for the article or that he had paid the Editor for its insertion. The *Wigan Observer* might have been paid 30s. for the insertion, but it was only a small matter. At this Darling interposed with a neat and appropriate Latin quotation, *Gutta cavat lapidem, non vi sed saepe cadendo.* (It is not the strength of the drop but its constant reiteration which wears away the stone). The aptness of the quotation, however, was unfortunately lost upon Sir Hedley who did not understand Latin. A pleasantly polite dialogue then took place between Mr. Swift and Sir Hedley.

MR. SWIFT : Do you value Dr. Addison's opinions ?

SIR HEDLEY : No.

MR. SWIFT : Whose opinions do you value ?

SIR HEDLEY : I value your opinions much more than those of Dr. Addison.

MR. SWIFT : You do me too much honour.

SIR HEDLEY : I speak the truth.

MR. SWIFT : Were you not pursuing the same end as the *Neue Freie Presse ?*

SIR HEDLEY : Yes. But the question whether we desire the same thing cannot be answered by a plain yes and no.

MR. SWIFT : What did the *Neue Freie Presse* desire ?

SIR HEDLEY : I don't know what it desired. The question you put is like the historic, " Have you left off hammering your wife ? " and is an instance of the fallacy of putting many questions in one form.

Sir Hedley went on to say that owing to the article in the *Daily Mail* his business was in a state of suspended animation. " People," he said, " see a statement in the *Daily Mail* and, poor simple people, they believe it to be true."

Mr. Potter, manager of the advertising agency which was responsible for the scheme of paying newspapers to take the articles, gave evidence that he had been approached by the *Daily Mail* and told that the Associated Newspapers would accept no more advertisements from him. He read a letter written by him promising not to issue any more copy on behalf of Sir Hedley's agency, and said that after that the *Daily Mail* had agreed to take advertisements from him again. The defence called Mr Horace Lennard, the *Daily Mail* Political Correspondent who had written the article. His instructions had been to find out proofs, and it was his duty as a journalist to discover the truth. " It is mine also," said Darling, " and I only regret that I don't succeed more often."

Darling then summed up at length, and clearly in favour of the plaintiff. He went through the facts with considerable detail and explained that Sir Hedley had said that he thought Mr. Lloyd George's Government were not so active in winning the War as they should have been. " He tells us that personally he was not one of those who said that the necessary alternative to Mr. Lloyd George was Mr. Asquith, but somebody quite outside the run of Party Politicians in England, and the man whom he would have placed there is General Smuts. But that is only a matter of opinion. He is entitled to think that General Smuts would govern the country better than Mr. Lloyd George or Mr. Asquith if he chooses, and if he thinks so he may say so. . . There is nothing very wicked or perverse in the plaintiff preferring a Dictator to the Politicians. It was quite common with the Romans, as in the case of Cincinnatus. If we get half as good a peace in Paris today by the thirty or forty people who are managing it there for us we shall do well."

After this flash of prophetic vision, Darling went on to discuss the position of a man who wanted to ventilate his views but had no newspapers of his own in which to do it. " Sir Hedley le Bas thought that the first thing was to get rid of Mr. Lloyd George. So do a good many people. . . So far as I can see there is nobody in the world who could be Prime Minister of whom different people would not hold other opinions. Sir Hedley had not a newspaper

of his own. If he held these views, and had owned a great newspaper, he could have put them in his newspaper: he could have paid a man, and he could have said that these were his views. If he owned five newspapers, of course he could have put these views into the whole five. But he had not got a newspaper; it is not everybody who has. So he looked round, and it occurred to him that he might make use of what he had first of all intended to establish, merely a news agency." Darling then remarked on the difficulty of getting articles into the papers owing to the shortage of paper. "During the War the food for our minds was rationed, owing to the paper shortage, just like the food for our bodies; it would never have done to let one out-balance the other." On the subject of Mr. Potter's agency he said: "Nobody has attacked them. They did offend a very great organisation and they came to grief and they did undoubtedly have to bow very low before the throne of the Potentate whom they had offended, and they had to lick the dust, and go through all the proper signs of repentance."

On the question of justification, he said: "Now what Sir Hedley le Bas has done is this—and this is all he has done; he paid these newspapers to insert articles. The newspapers might complain of the violent language used, but what the *Daily Mail* complained of was that the effect of this disguised advertising was that Sir Hedley le Bas was making it appear that that was the genuine opinion of country journals. The whole difference seems to be this question of the morality of paying for an article and then publishing it, and the morality of making payment for the publication of the same article. Now what is the difference? How is it right to do the one, and very, very wrong to do the other? When every one of these articles was signed with the name of the man who wrote it can you say that it deserves the denunciation which you find if you read the articles of which the plaintiff complains? . . . Each party is entitled to advocate the claims of the man whom it thinks ought to govern the country, but neither is entitled to libel the other, and if one of them has done it, it is for you so say what are to be the damages."

Darling had summed up clearly with a view to a finding for the plaintiff. It was, therefore, a matter of considerable surprise to him when, after only a short absence, the Jury returned with a verdict for the defendants. It would, however, have been a greater

surprise had he not been an experienced Judge who realised that on occasion Juries, especially in libel actions, give verdicts the apparent perversity of which makes lawyers almost despair of the system. But that no doubt is what Juries are for. The Jury in this case were clearly attracted chiefly by the one issue which they were not trying, that is to say : Would Mr. Lloyd George or Mr. Asquith be the better political leader for the country ? In the spring of 1919 there could be no doubt about the view twelve representative Englishmen would take on this matter. And so, despite the Judge's summing up, Sir Hedley le Bas lost his case.

The case of *Mond* v. *Fraser & Beamish* was closer in character to the Pemberton Billing case, and Mr. Beamish himself had given evidence in that trial, as Treasurer of the Vigilantes. Henry Beamish was the soldier son of an admiral, and had seen service in the Boer War. He was at once intensely patriotic and tirelessly anti-Semitic. He had formed the view that international finance, Judaism, and Bolshevism were a trinity of evil of which the aim and the effect was to subvert the National State. To propagate these views, which he did with a good deal of freedom, he founded a society called The Britons. He was friendly with a man named Harry Fraser, himself secretary of an organisation known as the Silver Badge Society, the object of which was to procure political jobs for ex-soldiers. One day Mr. Beamish said to his friend : " It is about time we did something. Things are getting pretty thick, and unless somebody makes a sacrifice to bring these things to light, goodness only knows what will happen." Mr. Fraser was instantly impressed. " By God," he said, " Why the devil didn't you think of that before ? We will do it."

The course of action followed by Mr. Beamish and Mr. Fraser involved the display in a window near Charing Cross of a large poster bearing the words " Sir Alfred Moritz Mond is a traitor ; he allotted shares to Huns during the War."

Sir Alfred Moritz Mond was a person of great importance ; he was M.P. for Swansea, a Privy Councillor, and First Commissioner of Works. He was also a Jew of German extraction. In addition, he was a financier. He united in his person, therefore, many of the characteristics most disliked by Mr. Beamish and Mr. Fraser.

The allegations as to the allotting of shares rested on certain

changes which had taken place in the Mond Nickel Company of which Sir Alfred had been Chairman until 1916, when he resigned his directorate to devote himself to public service. Early in 1914, before the War started, the old Mond Nickel Company had been wound up and converted into the new company. It was then provided that the registered shareholders of the old company should be entitled to shares in the new company, provided they made application by letter within thirty days. By the terms of the agreement between the two companies, however, a shareholder was not under any obligation to make such a claim, and if he did not in fact do so, his shares in the old company were to be sold and the proceeds held for him. Now a certain number of shareholders of the old Mond Nickel Company were foreigners, resident in what were shortly to become enemy countries. Of these some applied, and at various Board Meetings from August, 1914, onwards, at which Sir Alfred was not himself present, shares were allotted to these foreigners. On November 24 the Trading With the Enemy Amendment Act was passed. Under its provisions the directors of Mond Nickel applied to the Board of Trade for authorisation for the registration of shareholders in enemy countries who had rights under the reconstruction scheme. The authorisation was given, and it was resolved at a Board Meeting to allot shares in accordance with these conditions. No share certificates, however, were sent to the enemy shareholders and no interest was paid to them, the interest going to the Public Trustee as custodian of the share interests of enemy shareholders under the Trading With the Enemy Act.

It was these circumstances that prompted the allegation made by Mr. Beamish and Mr. Fraser. Sir Alfred Mond not unnaturally resented the imputation, and in the Spring of 1919 obtained an *interim* injunction to restrain them from repeating the libel. They disobeyed the injunction and were fined £50 for Contempt of Court in consequence. Sir Alfred brought proceedings for libel in the King's Bench Division. There was, however, this difference in their method of appearing. Sir Alfred was represented by Sir Edward Carson, K.C., Mr. Douglas Hogg, K.C., Mr. Patrick Hastings, K.C., Mr. Harold Smith, brother to Lord Birkenhead, and Mr. Herbert Metcalfe; Mr. Fraser was represented by two juniors only, Mr. Percival Smith and Mr. Gathorne-Hardy, while

Mr. Beamish preferred to appear in person because, as he said, no barrister could bring out the things that he would bring out. No doubt there was truth in this. The defence to the action was one of justification and fair comment; and the issues as defined by Darling were three: first, was Sir Alfred Mond a traitor? secondly, did he allot shares to Germans during the War? thirdly, if so, was the comment that he was a traitor a fair comment? Of course, if the answer to the second question was in the negative, then the answer to the third must be in the negative also, for comment based on untrue facts cannot be fair comment.

Mr. Douglas Hogg opened the batting for his side in a speech which lasted for an hour and a half, and followed this by calling Sir Alfred Mond, who gave evidence of his own birth and extraction and of the history of the Mond Nickel Company. After he had been briefly cross-examined by Mr. Percival Smith, on behalf of Mr. Fraser, heavy reinforcements were called up in the shape of Lord Moulton, who had been head of the Explosive Department of the War Office during the War. He gave evidence as to the great work done by Brunner, Mond during the War, after Sir Alfred had placed the whole organisation of the firm at the Government's disposal. He was then cross-examined by Mr. Beamish and in answer to him said that he knew that Dr. Ludwig Mond, Sir Alfred's father, was a Jew by race and a German. The cross-examination then proceeded:

BEAMISH: A man can't be both a Jew and a German.

MOULTON: I have known excellent Jews who have also been Englishmen—and so why could not a Jew also be a German?

BEAMISH: Can you have a person possessing two nationalities? A person can't be by race both English and Jew.

At this, applause broke out in the rear of the Court, but instantly subsided when Darling threatened to have the Court cleared. Beamish then asked; "Can a man be of two distinct races?" Darling's comment was, "Most Englishmen are composed of three and sometimes more." Beamish then proceeded to test the accuracy of Lord Moulton's memory. "Would you say," he asked, "that you are always accurate in your statements?"

"If a man were to say he was always accurate," replied Lord Moulton, "he would show at least that he had committed his first inaccuracy." Mr. Beamish then referred to a law case in which

Lord Moulton was personally involved, but was told by the Judge that if his questions were directed to showing that Lord Moulton had not a good memory he must confine himself to questions tending to show that.

" I should be obliged if Your Lordship will advise me," said Mr. Beamish.

" I cannot advise," replied Darling, " for I must be impartial. You can show that Lord Moulton has forgotten something that happened or you can try to discredit him."

A little later, when Mr. Hogg objected to a question, Darling said : " The question is obviously put to Lord Moulton to discredit him and not to test his memory at all. Mr. Beamish, you are entitled to ask questions to try to get the Jury to say that Lord Moulton is not to be believed on his oath, but don't put such questions under the guise of an attempt to test memory."

At this Mr. Beamish said that he had no desire to be offensive to Lord Moulton and would ask no more questions.

After this preliminary skirmish, Sir Alfred was recalled for further cross-examination on the following day. His cross-examination, which lasted the better part of three days, covered an immense amount of ground. His counsel were frequent with their objections to questions. Sir Edward Carson objected to a cross-examination about Sir Alfred's political views, to which Darling replied : " Mr. Smith is entitled to use any method he likes to prove that the witness is a traitor. He has now asked the witness whether he is not a supporter of the Government." At another stage Mr. Smith referred to an article written by himself in the *New Witness*, a paper edited by G. K. Chesterton, in which he called Sir Alfred Mond a traitor. " Mr. Smith, Mr. Beamish and Mr. Fraser were in a conspiracy to attack Sir Alfred Mond," said Sir Edward Carson in his habitual conciliatory manner. " I say that is a deliberate falsehood," cried Mr. Smith. At this there was fresh applause in Court. Darling ordered the gallery to be cleared, but it was pointed out to him that the applause did not come from the gallery but from the back of the court. On hearing this he revoked his order, but said that he would on no account have the Court disturbed by a claque. Nor was it again.

Mr. Beamish's cross-examination was likewise very protracted, for Darling said that he felt bound to give considerable licence to a

defendant appearing in person. The exchanges were nothing if not sprightly :

BEAMISH : Do you not think that the country should have been governed during the War by those of British blood ?

DARLING : You have not yet defined British blood.

BEAMISH : Blood that is at least not Asiatic. I will say about Sir Edward Carson that he is a Briton. What do you understand by a traitor, Sir Alfred ?

DARLING : The Statute of Treason of Edward III defines traitors as those who give aid and comfort to the King's enemies. (This was the statute under which Casement had been convicted and on which Darling had given judgment in the Court of Criminal Appeal.)

BEAMISH : I look upon a traitor as one who betrays his trust.

DARLING : I prefer a statutory to a dictionary definition.

Mr. Beamish then began to cross-examine Sir Alfred about his alleged control of various newspapers including the *Westminster Gazette*, but Darling warned him not to persist in putting questions that had no bearing on the issue. He then disallowed a whole series of questions directed to the relations of owners and editors of newspapers. Disappointed in this, Mr. Beamish asked Sir Alfred what his politics were.

CARSON : Is he bound to say and so incriminate himself ? (No witness is bound to answer a question that might incriminate him.)

DARLING : I am induced to admit the question in the hope that he will say he is a follower of Sir Edward Carson.

CARSON : A man is entitled to be of any politics and any religion in this country.

BEAMISH : I wish you would remember that in Ireland.

Mr. Beamish then continued his cross-examination, but many of his questions were disallowed. Sir Alfred was then cross-examined about the *English Review*, which he had taken over from Ford Maddox Hueffer. " What is this Review ? " asked Darling, " I think I know its name. Let me have a copy." Darling had, in fact, reason to know its name, for he had written a poem for it in 1911 entitled " In the Abbey," which at his request Carson read to the Court. Several articles were read by Mr. Beamish to the witness with the suggestion that they were of an immoral tendency.

It may be mentioned that Darling's poem was published in the *English Review* before Sir Alfred Mond had control of the paper; Sir Alfred's association with it was already at an end at the time of the trial.

At the conclusion of the plaintiff's case, Mr. Fraser said that his business now was to try and clear this country of aliens and to root out all "jiggery-pokery generally." In answer to Darling he explained that when he said Sir Alfred was a traitor he meant that he had offended against the trust that was put in his hands; he was a Member of Parliament and had broken the provisions of the Trading With the Enemy Act, and in consequence he was a traitor.

Mr. Beamish was not so successful in giving his evidence, as he had no counsel to examine him. He embarked upon a long diatribe about the Boer War, and said how, although 25,000 British men had fallen, the result was that industry in South Africa was under the heel of the international Jew. He also had a good deal to say about the *Westminster Gazette* and the *English Review*, and affirmed that Brunner, Mond had interlocking interests with German firms, of one of which he would call the director, a Mr. Gardiner to give evidence. At this the long-suffering Darling intervened. "The issue in this case," he said, "is the shortest I have ever tried. It is whether the words complained of are true. You can address the Jury later."

Mr. Beamish apologised, "I seem to get off the trail," he said, "and so I had better conclude and bring out what I wish in cross-examination." In cross-examination he acquitted himself with considerable gusto and said he thought Sir Alfred was out to destroy Great Britain, Christianity and everything decent. The time had arrived when the plottings of the international Jew financiers should be exposed. After this, however, the defendant's case went with less of a swing, for when Mr. Beamish called Mr. Henry Gardiner he did not appear; and a Dr. Ernest Schuster likewise failed to materialise. So Mr. Beamish had to content himself with Mr. Robert Mond, Sir Alfred's elder brother, who denied that there had been any communication, direct or indirect between Brunner, Mond or the Mond-Nickel Company and the enemy during the War. Mr. Beamish then started on his official address to the Jury. He said he had been led to put up the poster by the activities of the

small gang of Jewish financiers who controlled the destinies of the world. Jews did not like the world to be at peace because they could not make so much money as in time of War. " Was this country," he demanded rhetorically, " now a place for heroes to live in ? "

" That statement is not in evidence," commented Darling, " there really must be some limit to your remarks."

Mr. Beamish then went on at some length about Bolshevism and Judaism and the previous Election and Sir Edward Carson, until Darling said that he was merely making abusive remarks and ordered him to sit down. Mr. Beamish, however, was allowed to resume his address after the luncheon adjournment, when he said he would have been better able to deal with Sir Alfred if it had not been for the array of Counsel behind him. In conclusion, he said that he wished he could have fought it out in the decent clean way in which the fight of the previous night had been conducted. With this reference to the great topical event of the day, the Becket-Carpentier bout, Mr. Beamish concluded his remarks.

After Carson had replied, Darling summed up. He did not consider it an occasion for an elaborate summing up, as the Jury had heard what could be said in justification of the libel and it was for them to say whether the words were true. " I have perhaps allowed too great licence to the defendants, and the defendants have taken advantage of my care that their side should be put before the Jury to shower abuse on people who have nothing to do with the action." He then referred to the Statute of Jews, 1290, by which Jews were made the King's bondmen and became a species of Crown Property and had their lives protected in return for their money, which was exacted whenever it was wanted. Beamish had referred appreciatively to this position which they had occupied under the Angevin kings and he would apparently like a return to that state of affairs. " No doubt he would welcome a revival of the *auto de fé* which marked the reign of Ferdinand and Isabella. The status of the Jew, however, is not the issue in this case but whether the words complained of are true, and whether if true the comment on them is fair."

On this issue the Jury had very little difficulty in making up their minds, and after twenty minutes found a verdict for the plaintiff with £5,000 damages. The real interest of this case, however, in the life of Darling, is the contrast presented by his

successful handling of this case to his comparative failure in the Pemberton Billing case in the previous year. The war was over at the time of the hearing of the Mond case ; but much of the feeling engendered by it remained. Again, as in the Pemberton Billing case, the defendant was appearing in person and the libel was sufficiently wide legitimately to introduce a fairly extended scope in justification. Darling had no doubt profited by the experience of the Pemberton Billing trial, and he gave no licence to the rowdy elements assembled in Court ; consequently, in spite of one or two efforts to interrupt the proceedings, the conditions which had prevailed during part of the Pemberton Billing case were at no time allowed to repeat themselves. But he did not do what it would be a temptation to do in such circumstances, and what some people might perhaps have done. He did not, that is to say, bearing in mind the necessity that there must be no repetition of the incidents or behaviour that marred the Pemberton Billing trial, lose sight of the supreme necessity that justice should be done. It had always been Darling's policy and belief, as we have seen before, that a litigant appearing in person should have an extended latitude so that the merits of his case should not suffer from his technical ignorance. He thought his latitude had been abused on the previous occasion, and he thought that there were indications that it would be abused on this occasion ; but he did not on that account depart from his habitual custom of giving an extended latitude to the defendant. At times this latitude was not enough ; but Darling was rigorous in not allowing any trespass beyond its generous bounds. When there was such he intervened instantly and effectively, and in the course of the trial had to disallow much that was irrelevant. The result was that order and decency were maintained, and at the same time, the defendant was able to put his case with sufficient amplitude for justice to be done. The Mond case vindicated Darling from the criticisms that the Pemberton Billing trial had brought upon his judicial capacity for trying cases such as these.

CHAPTER XXII

DARLING AFTER THE WAR

THE years after the War saw Darling at the height of his prestige. He had been a Judge for over twenty years, and acting Lord Chief Justice for a considerable period. It would have been impossible to have occupied this position without becoming a much respected figure : but it would have been quite easy to have been on the Bench even longer without acquiring that peculiar position in the esteem of his fellow-countrymen which Darling enjoyed. It was not only that he was a good Judge, it was not only that he was a facile and ready wit, it was not only that he had great human qualities, it was something more than all that. Darling was more than the Senior Judge : to the man in the street he personified the business of the Law Courts in the same way as, in an earlier age, Garrick had personified the Stage and W. G. Grace had been the symbol of Cricket. Darling, in short, was a national figure, chosen by the silent, though unmistakeable suffrage of the people. The British Public looked upon him with that mixture of respectful admiration and affectionate proprietorship with which they invest their popular idols. For the paradox had now been achieved in the sight of all men : Darling, the eclectic wit, who loved French literature and hated games and compromise, had become an idol of the bluff and insular British Public.

His position was evidenced in many ways ; by the attention the Press paid to him, by the duties that were accorded him, and by the great demand for him as speaker and honoured guest. The passage of the years, which had divorced him from active participation in politics, had left him little scope for indulgence in the trenchant style of speaking we met with in the '80s and '90s. But his lighter style of speaking became even more polished and successful with the years, and it was in the early '20s that Darling reached his apotheosis as an after-dinner speaker. He was in enormous demand

at this time for functions of this sort, and, besides all sorts of legal dinners, was employed in proposing such diverse toasts as the Royal Society and the Profession of Journalism. After-dinner speaking is the most practised and the least understood art in England. It requires conciseness, wit, and the quality of the unexpected. All these Darling possessed in ample measure. It is impossible by quotation to illustrate the attractiveness of an after-dinner speaker, but at the time of writing there are fortunately many alive who frequently heard Lord Darling in this capacity. One illustration, therefore, must suffice out of the many that could be given to show his command of these three qualities. It is taken from his speech at the Pegasus Dinner of 1924, and has the advantage of showing him also as a versifier. He said, on that occasion :

> *Ibi remedium ubijus*
> Is well agreed
> To all who ask—aye, e'en to us—
> Law gives their meed.
> And if, in fresher fields,
> We fall and bleed,
> This a like guerdon yields
> As we from Point to Point proceed.

Amongst his more serious extra-judicial duties was his chairmanship of the Royal Commission on Courts Martial. The Commission included amongst its members Mr. Bottomley, who had previously given it as his opinion that it was iniquitous that great powers of punishment should reside in the hands of officers who had very little, if any, legal knowledge. As a result of the Commission, Darling decided that it would be a good thing to take a serving soldier with him as Marshal when he next went on Circuit, instead of the customary apprentice barrister. He asked Lord Haig, then Commander-in-Chief in England, who was a friend of his, whether this could be arranged. Lord Haig spoke to the commanding officer of the 17th Lancers on the subject, and asked him to suggest an officer. The appointment was offered to Lord Arthur Butler, son of Lord Ormonde, at that time a subaltern in the 17th Lancers, which as the 17th/21st he was to command some ten years later. He accepted the offer, and accompanied Darling on the Western Circuit in the autumn of 1919.

Lord Arthur was not the only distinguished Marshal whom

Darling took on Circuit, for at one time he had Mr. Arthur Lowther, son of Lord Ullswater. As a judge Darling was not keen to go on circuit, though he enjoyed some aspects of the life there, which was not without its amusing aspects. For instance, once at Bristol, he left his robes behind in Court. Consequently, when his Marshal came to collect him in the Judge's Lodgings the following morning for the ceremonial drive down to the Court in the Sheriff's Coach for which, of course, he ought to have been robed, he found him still in his shooting jacket. Thus accoutred, he entered the coach and drove down to the Court. When the coach arrived at the Court the trumpets sounded, the Guard presented arms and the crowds prepared to gape at the expected appearance of the robed and bewigged majesty of the Law. Instead, to the surprise and gratification of all, there emerged from the coach a little man in a shooting-jacket and a deerstalker hat. At least, so the story goes, but its authority is weakened by the fact that Darling never possessed a shooting-jacket or a deerstalking hat.

There was too, however, the case of the over-zealous under-sheriff, which has greater authenticity. This under-sheriff thought he would be failing in his duty if he did not pursue the Judge as closely as a shadow. Darling bore it for some time but at last felt that something must be done to rid himself of the ubiquitous under-sheriff. Suspecting that, contrary to his own loudly expressed opinion of himself, the under-sheriff was not much of an equestrian, Darling invited him to join him and his daughter out riding the following day. The under-sheriff duly arrived and the party set off. They had not gone far before Darling put his horse into a brisk gallop. The under-sheriff trailed nervously in the rear, and the end of the ride found him as stiff as he was miserable. From then on he danced attendance on Darling no more.

But though on this occasion Darling turned upon his persecutor, he was very sociable on Circuit. Two letters to Lord Arthur Butler, in the summer of 1923, indicate the pleasant time he had on Circuit.

Bristol,
29th June, 1923.

Dear Lord Arthur,

You may, I hope, be able to pay me a visit at Winchester where I open Assizes on Monday next. Come whichever day

suits you best, for you will find me there all next week, and bring with you any friends you please. We lunch at the Judge's Lodgings, which you haven't forgotten, I dare say. If you can stay the night all the better, and the room you had as Marshal shall receive you again.

Di has been staying with friends in the country a few miles from here and has come in to see me now and then. Tomorrow she goes with me to stay with the Portals at Laverstoke, and I shall go to Winchester on Monday morning and remain there during Assizes. Some relics of the 60th and The Rifle Brigade still dwell in the Depot, and Borden supplies me with cases of petty burglary.

Ever yours sincerely,
CHARLES DARLING.

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81 Albert Hall Mansions, S.W.7.
8th July, 1923.

Dear Lord Arthur,

I returned home from Winchester yesterday, and am very sorry you weren't able to come over whilst I was there.

I too liked the Memorial to the 60th, and also the one to the Hampshire Regt. I gather that you took your French friend to the Cathedral too early for him to salute the statue of Joan of Arc. It is excessively smart at present and will not look its best I think for several centuries yet. Just facing it is a statue of Bishop North, in a wig just like mine. He kneels and seems to be praying to the Saint, for that she had lately become. I fear that none of this will melt Poincaré and his countrymen.

We had a most pleasant time at Winchester, which I wish you could have shared instead of tramping about in all the panoply of War. For Laverstoke, Hursley, the Dean and the Depot filled our leisure with hospitality. At Hursley was staying a very agreeable French General Tanplieb, an Alsatian and a Senator. I had met him and his wife last year, and they are to look us up here on their way home. He was opposed to the occupation of the Ruhr, but sees no way out of it. How, I wonder, will it end.

Ever yours sincerely,
CHARLES DARLING.

He liked the company of his young Marshals, and was tolerantly amused at their occasional outbursts of high spirits. On one occasion, when he was on Circuit with Mr. Justice Finlay, the two Marshals (not any of those named) dined with the Greenjacket Depot Mess. After a hilarious evening, the Marshals invited the entire Mess back to the Judge's lodgings. It was not expected that the Judges would still be up at that late hour. But when the noisy throng arrived, they were surprised and somewhat abashed by the spectacle of the two Judges still talking quietly together. They made as if to retire, in some confusion, but Darling turned to his brother Judge with a smile and said: "It looks as if it's time for us to say good-night, Finlay," and on that the two Judges rose and left the younger generation to the unimpeded continuance of their revels.

In 1920 Darling gave up his house at Prince's Gardens and took a large flat at 81, Albert Hall Mansions. By this time his son Jack was married and having served in the 20th Hussars (decorated with the D.S.O. in 1916) became Adjutant to the Shropshire Yeomanry and went to live for a time near Shrewsbury. His elder son was born in May, 1919, and ultimately succeeded Lord Darling in the Barony. He was Darling's fourth grandchild, and in the next three years two more grandsons were born.

His great companion from this time on till the end of his life was his daughter Diana. She accompanied him to the various functions he attended and acted as hostess when he entertained in his own house. She was his companion, too, on his various trips abroad, and when staying with people in England. Time and his judicial preoccupations, however, did not always admit of his going abroad as often as he would have wished. Thus, in the Spring of 1920 his daughter Diana spent ten weeks in Italy, and he hoped to go to Rome for the Easter vacation; but finding it impossible he had to be content with the New Forest. The Long Vacation of the following year they spent chiefly in paying a round of visits to friends in Scotland, returning to spend some time with his other daughter, Mrs. Pulteney, in Hampshire. During term time, when not on Circuit, Darling spent most of his week-ends in London, where he now only occasionally rode in the Row. An added pleasure which he was now able to enjoy was Grillion's Club, to which he had been elected in 1913. He was a very regular diner

there, especially after the War, and always enjoyed it enormously. The Club has, of course, the reputation of containing in its ranks some of the most distinguished men of all walks of life in the country. During the War Darling proposed for membership Lord Haig. He still liked going into the country, however, when he had time to make it worth while. But after the War he hunted no more, and kept no horses of his own. He wrote to a friend from the Carlton Club in November, 1920: "Every day I go to Court I wish I were going hunting instead, but I haven't a horse and could hardly afford to feed one if I had. People who won't work must now be paid at Trade Union rates by those who do."

Darling retained his keen interest in public affairs, and not infrequently continued his practice of writing letters to *The Times* on subjects of national moment. In the nature of things, many of these letters had to be signed with a pseudonym. Thus in May, 1919, he wrote a letter to *The Times* in order to enlighten Mr. Smillie, the miner's leader, who had complained to the Royal Commission that he was puzzled to find whether any individual was entitled to claim absolute ownership of the coal or the other minerals under the surface of the soil. Darling's letter, which contained references to Lord Coke (and incidentally a quotation from Horace) was appropriately signed "Coal and Coke." Another letter to *The Times* in 1921, dealing with a speech of Mr. J. H. Thomas on the social revolution and the exploitation of the unemployed, started with the words: "Being myself one of the Unemployed—until the end of the Long Vacation," and was signed simply "X."

On some other questions he could not express his opinions freely in the Press, but his mind was considerably exercised with them at this period. Foremost amongst these questions were, of course, the Irish troubles which so darkened the early days of the Peace. His opinions about Ireland remained what they had been when he used to cross swords with the Irish Nationalist Members in the House of Commons thirty years previously. But for the expression of these opinions one has to go to his private letters and conversations. Thus he wrote to Lord Arthur Butler, who had been appointed an Instructor to the Royal Military College at Sandhurst: "I am very glad to hear that you are not involved in this horrible Irish mess which is neither war nor peace." And



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MR. JUSTICE DARLING

again : " You are very lucky—it seems to me—not to be with your regiment at present. A soldier may so easily get into an unpleasant situation when he is obliged to act, where there is neither war nor peace and no credit is to be earned. Of course ' reprisals ' can't be tolerated, but cowardly murderers have no right to complain. The best ' reprisal ' would be to feed forcibly the Lord Mayor of Cork and to announce that for every policeman killed a Sinn Feiner should be kept alive." Darling, in fact, summed up his views on the Irish Question of this time in a characteristic witty sentence. He was asked by an earnest legislator whether he thought it necessary that Ireland should have a Second Chamber. " I do," he replied, " but the second should be a lethal chamber. That would solve the question."

Throughout his life, he remained in temperament what his judicial position prevented him from being in politics, a staunch Conservative. Thus, apart from purely political questions he was generally apprehensive of the effects of change. On the question of the admission of women to juries he wrote to Lord Arthur Butler from Chelmsford, in June, 1920 : " Juries are slow sometimes. Luckily you have none on Courts Martial, but the ' democracy ' is capable of providing them. Next Circuit we shall have them composed of men and women mixed, and I wonder whether they will agree on anything."

But it must not be thought that he was a mere reactionary or *laudator temporis acti*. It was about this time that, just after the result of an exciting by-election, he went into his Bank, the Chancery Lane branch of the National Provincial Bank. The cashier reminded him of his own early election at Deptford, and they laughed together at the memory of the rows of factory girls, twelve abreast parading the streets singing :

> Oh you little Darling, I love you,
> Oh you little Darling, are you true ?
> If you only loved me as you ought to do
> Nothing in the world should ever part us two.

After a little more such reminiscence the cashier inevitably used the phrase, " the good old times." This recalled Darling to the present : " Next time I come in," he said quietly, " just tell me which were those ' good old times,' " and added with a little twinkle : " Did they ever exist, I wonder ? "

One thing which, apart from anything else, would have saved Darling from becoming a *laudator temporis acti* was the interest he always took in the younger generation, and his association with it. One example of this was his visit to the Oxford Moot Club in 1921. The Codrington Library at All Souls was crowded to suffocation with dons and undergraduates to hear four undergraduate "Counsel" argue before Mr. Justice Darling the case of *Gladeye* v. *Blinkers*, in which Miss Gertie Gladeye, a woman student, sued Professor Blinkers, author of the treatise on the *Manners and Morals of the Brontosaurus*, for damages for Breach of Promise. The President explained that people present were probably actuated by other than the desire to acquire knowledge. Nor were they disappointed, for Darling was in his best form, frequently interrupting counsel, to make the proceedings, as he assured them, resemble those in a real Court of Law. It is pleasant to be able to record this agreeable visit of Darling to a University Society, as he was sadly disappointed by the last visit he paid to the Oxford Union.

For the rest, except that he no longer hunted, his tastes and recreations remained very similar to what they had been. He continued his painting, his social life, and his contact with a varied and comprehensive circle of acquaintances. He remained, too, one of the people in this country whom distinguished foreigners were always anxious to meet. Amongst these was Mr. Taft, Chief Justice of the Supreme Court of the United States, of whom Darling saw a great deal in the Summer of 1922. He was a large jovial man, Chestertonian in wit and figure, and the two lawyers found in each other very agreeable companionship. He wrote to Darling just before sailing to America:

Knowsley, Prescot,
July 8th, 1922.

Dear Sir Charles,

This is to say Goodbye. We sail this afternoon. I am looking forward to reading *Scintillae Juris* on the deck of the *Canopic* as we sail today to my summer home at Murray Bay.

I want to thank you for the kindness you have done me during my stay, for the pleasure of your company and for your reminiscences of your former Judges, and also to thank through your Diana the divine leader of the Fritwell Manor Orchestra in that

never-to-be-forgotten evening in the schoolroom of the manor. Please give her my respectful regard.

Sincerely yours,
N. H. TAFT.

May our paths often cross in the future.

The reference in the letter to the Fritwell Manor Orchestra is to a week-end that Chief Justice Taft and Darling spent as the guests of Sir John Simon at Fritwell Manor, where they were given musical entertainment in the evening by Diana Darling and Sir John Simon's daughter.

He retained his old friends and sometimes saluted them in verse, as when Mr. Justice Lawrence sent him a salmon from the Wye, which was acknowledged by a poem of thanks to " A.T.L. who sent me a salmon." It appeared over the initials " C.D." in the *Saturday Review*, and started :

> Lorry, I thank you for the welcome fish
> Alike my dinner and a breakfast dish.

and ended charmingly :

> Sauce Souvenir by faithful memories stored !
> This o'er your salmon recollection poured,
> Enriched each mouthful with its essence fine
> So leaves me doubly debtor as I dine.

He wrote a good deal of poetry in the *Saturday Review* in the years immediately following the War—generally light poems on matters of passing political or social interest, and almost invariably unsigned. In February, 1922, however, he wrote a poem on a more serious subject in *The Times*, on the last voyage of Sir Ernest Shackleton. It was entitled *Epiphany 1922*, and against the cutting he kept of the poem, he wrote the words :

" See the last entry of Sir Ernest Shackleton on the Eve of Epiphany." The poem ran :

> He saw the sign, and bowed his head, who last
> Sought newer fame below the Southern Cross,
> Beyond the boundary of gain or loss ;
> Thence on the unlighted, trackless voyage passed
> To endless silence, timeless, spaceless, vast ;
> Unfathomed : fenced by neither wall nor fosse ;
> Nor frozen seas are there, nor storms to toss
> The ship aloft, or snap the straining mast.

Eternal star—the last to meet his sight—
Which came to pause awhile above the bay;
Then through the evening sparkled as a gem,
Gathering its lustre from the deepening night;
A point to mark the ending of the way.
Wert thou the star that stood o'er Bethlehem?

The following day he received this letter from Miss Shackleton:

Addison Road,
W.14.

5/2/22.

Dear Sir,

I am Sir Ernest Shackleton's sister, and want to thank you from the bottom of my heart for your glorious poem in *The Times* of Saturday, "Epiphany 1922." I do not know if you are the Judge, but at any rate I must write and tell you what a comfort it is to us all. That must have been the Star he refers to in his last entry.

In the autumn of 1919 there were persistent rumours of Darling's impending retirement from the Bench. As a specimen of the sentiments aroused by this unconfirmed report may be quoted a letter written by Lord Desart, dated October 18, 1919. The relevant part of the letter runs:

Dear Darling,

Some time ago I saw in a paper that you intended to resign, but, so far as I know there has been no official confirmation of that statement. But, as I have not seen your name in the Cause lists, I begin to fear that it may be true. I say "fear" because though it may add to the amenities of your life and though rest will be well earned, it will be a great and serious loss to the King's Bench Division and the Judiciary—If you wish for it, I am very glad for your sake, but I hope it will not take you away from London and your many friends.—That is assuming it to be true.

Lord Desart's fears were unfounded. Darling had no wish yet to retire, and he was to continue some years on the Bench, his work in the Courts remaining the central feature of a busy and versatile life.

CHAPTER XXIII

EXIT BOTTOMLEY

NOT the least regrettable of the results of war is the inequality, not to say inequity, of the treatment it metes out to those whose lives and fortunes it affects. In a sophisticated society it seems impossible, even in times of peace when there is an opportunity for adjustment, satisfactorily to correlate deserts and rewards. In times of war, when the high pressure of action excludes such philosophic consideration, it is even more difficult; and at such times it is possible for those who serve their country least to secure the greatest rewards.

The hectic atmosphere of Armageddon was an admirable background for the peculiar and specious talents of a man like Bottomley. Whether he was at all touched by the fire of patriotism it would be academic at this stage to enquire; what is known is that he did very well out of the War. If patriotism was the fashion, then Bottomley would be chief patriot. The *John Bull* placard, "To Hell With Servia," made no more appearances; for was not its Editor the great recruiting agent? It is true that Mr. Asquith, as Prime Minister, refused Bottomley's generous offer to become the Government's chief official recruiting officer; but he toured the country in a triumphant series of recruiting speeches, nicely adjusted in their content and quality to the size of the audience and the fee that was paid him. For Bottomley, who had lost his seat in Parliament on account of his bankruptcy, the War meant wealth and reputation; it meant also, in some sectors of what was known as the Home Front, a lavish and reckless conduct of life, admirably suited to the Bottomley temperament. The War, in fact, was his opportunity; and while others in foreign lands were reaping the whirlwind of death which they had not sown, Bottomley, whose nature was not to sow, was gathering his richer and more congenial harvest.

The Khaki Election of 1918 enabled him to resume his membership of the House of Commons, and he was even suggested in some quarters as a potential Cabinet Minister. But even in those halcyon

days there were occasional tiresome reminders of a past less open to the scrutiny of the critics. There was one particularly tiresome individual who insisted on circulating a pamphlet with the provocative title: "Horatio Bottomley Exposed." The pamphlet obtained a wide circulation and it was doubtful whether even Bottomley's new and exalted reputation would manage to survive so damning and so comprehensive an indictment. What was he to do? He could, of course, bring an action against the author of the pamphlet for libel. But then the author would plead justification, and his facts were disturbingly true. But Bottomley's resourcefulness was equal to the occasion. With the help of his friend Reuben Bigland, and a Birmingham man known as Telephone Jack because he claimed to have originated the system of telephoning the results of race-meetings direct to the newspapers from the course, he found a small printer named Greeney, who printed a few copies of the pamphlet for circulation. This was done so that Bottomley could bring an action for libel against Greeney, who agreed not to defend it but to tender an apology.

The case duly came on, and was tried before Darling in 1918. Greeney, according to the arrangement, put in no defence but was represented by counsel who was instructed to put in a plea in mitigation of damages. Bottomley, as usual, appeared in person, and opened the case with such vigour that not even the thought of the £100 he was to receive as a reward for his services was sufficient to keep the unfortunate Greeney in Court. He had to be taken out by Bigland, and returned to Court no more. Bottomley was not at all put out of countenance by this, and finished his opening in trenchant style. He then gave evidence and submitted himself to cross-examination. Darling summed up in favour of Bottomley —there was no other course open to him on the evidence—and the Jury had no hesitation in bringing in a verdict for the virtuous Mr. Bottomley with an award of £500 damages and costs against the iniquitous Mr. Greeney. Instead of this payment being made Greeney received £100 and his costs from Bottomley, though whether he thought it worth the money after Bottomley's opening is a matter of speculation. And so Bottomley was successful in arresting the progress of this dangerous and derogatory pamphlet.

It has often been suggested that Darling should have seen through this ruse and ensured a different verdict. This is wisdom

after the event, and ignores the difficulties presented by the position. In a case where there is no defence it is not possible for the Court to do other than find for the plaintiff. Nor could Darling or anybody else be expected to know of Bottomley's arrangements, or that he was paying Greeney's costs. All he knew, and all he was entitled to take into consideration, was what was on the pleadings and what was told him in Court. On this he could not have acted other than as he did. It is not the first nor the only whitewashing case that has gone through the Courts as if it were an ordinary action. Nor can this be wondered at since it is the business of the Bench to adjudicate on the facts brought before them by the parties, and not to borrow the rôle of detective and seek for hidden motives and concealed machinations.

So Bottomley was free to continue on his patriotic course. This he did by the launching of such typical schemes as the Victory Bond Club, the Thrift Prize Bond Club, the War Stock Combination, and the Victory Club Derby Sweepstakes. It is not necessary to recapitulate here the details of these schemes, which have passed into post-war history. Suffice it to say that they resembled the great majority of his undertakings in being unsound and fraudulent. His method with regard to sweepstakes was simple; he merely arranged the holders of the winning tickets in advance. Thus he paid Bigland for his services in connection with the Greeney Case by arranging that he should win the third prize in the War Stock Combination Lottery. Bigland had Ticket No. 3966 in this lottery, which he took in the name of his niece. The ticket duly won the third prize and he received two War Bonds of £500 each.

But all was not well between Bigland and Bottomley, for the former became disgusted with the other's hypocrisy. Bottomley wrote an article on Armistice Day in which he said, "And I heard a Voice from Heaven saying unto me, Write." Bigland promptly wired back to Bottomley in the following terms:

> And I heard a Voice from Heaven saying unto *me*: Confess! The spirit of William Lotinga is urging me on to unmask England's Greatest Living Humbug, the man that takes the Name of the Lord to cover up his terrible sins. I shall come to Wellington, hand you back your War Bonds, and give myself up to justice to clear my conscience.

Thus started the great contest between Bottomley and Bigland which was to end in Bottomley's downfall. It was an epic contest while it lasted, for both were shrewd men with a considerable flair for tactics, reinforced by the experience of years; both put into it all they knew, Bigland animated by a sense of justice and Bottomley impelled by the no-less imperative spur of self-preservation. But a hand in the game was taken, too, by a very astute member of the legal profession, Mr. Comyns Carr, Bigland's counsel.

A few years previously Bottomley had organised a sweepstake in which, as his custom was, he had hand-picked the winner. On this occasion the fortunate person was a certain lady described as "A Blind Widow of Toulouse." She *was* a blind widow of Toulouse, but she was also the sister of an East End furrier who was one of Bottomley's dummy Directors. It was especially fortunate for Bottomley that she was blind and lived abroad, for it made it easier to pay her off with a cheque for £250 instead of the £25,000 to which the winner of the sweepstake was entitled. There was some enquiry as to the whereabouts of the blind widow, but Bottomley astutely announced that she had received so many offers of marriage consequent on her good fortune, that her location had to be kept secret in her own interest. He had taken the precaution of having the cheque for £25,000 photographed, with the word "paid" upon it. Mr. Comyns Carr, however, who also had an account at the Midland Bank, noticed that it was the custom of the Midland Bank, if cheques were paid to an account at another branch or another Bank, to put the name of that branch in addition to the word "paid." Since there was no such additional information on the cheque for £25,000, it meant that it had been credited to and debited to accounts at the same branch. This narrowed the field considerably and the accountants who were set on to investigate discovered that on the same day as the Sweepstake Fund was debited £25,000, £25,000 was paid in to the account of the Northern Territorial Syndicate, which was a nominee account of Bottomley's. Armed with this information Bigland's detectives traced the blind widow to Paris; hot on their tracks, almost as if in a musical comedy, came Bottomley's detectives, who were following Bigland's. The upshot was that Bigland's detectives succeeded in bringing the Blind Widow over to London; once there, she was hidden

conveniently near the Old Bailey, where the Bottomley-Bigland feud was due to reach its dénouement.

A knowledge of these events is necessary in order to understand the tactics of the litigation which followed. Bigland was very anxious to expose Bottomley; and Bottomley was naturally no less anxious to crush Bigland before he could do so. That being the position between the parties, a crash was inevitable. It soon came. Bigland wrote a pamphlet headed: "The Downfall of Horatio Bottomley, M.P., his Latest and Greatest Swindle. How he Gulled Poor Subscribers to invest £ Notes in his Great Victory War Bond Club." Bottomley was left with no alternative save proceedings for libel, and he set in motion a prosecution of Bigland for the criminal offence. The case came up at Bow Street before Sir Chartres Biron, with Mr. Comyns Carr appearing for Bigland, and Bottomley this time represented by Sir Ernest Wild, K.C. The proceedings were marked by one or two brisk passages between Sir Chartres and Sir Ernest, and by a very effective cross-examination of Bottomley by Mr. Comyns Carr. Mr. Comyns Carr cross-examined him in detail about his various financial activities, and Bottomley tried hard, by adopting a very insolent demeanour, to make counsel lose his temper. In this he was unsuccessful, for whenever he was insolent or truculent Mr. Comyns Carr put his hands in his pockets and stared at the ceiling, as if fascinated in tracing the movements of some imaginary fly. It was Bottomley who lost his temper. Nevertheless, Bigland was duly committed to take his trial at the Old Bailey on a charge of criminal libel.

The charge of criminal libel was not the only one before Sir Chartres Biron, for Bottomley had put forward another charge, one of demanding by menaces, or in common parlance, blackmail. The charge was connected with the by-election in the Wrekin Division of Shropshire, in November, 1920, when General Sir Charles Townshend had stood as candidate for the Business Party, with Bottomley's support. The charge Bottomley now brought against Bigland was one of inciting three people to demand money with menaces from him by threatening to publish defamatory facts during the by-election. There was actually another charge before Sir Chartres of demanding money by menaces, but on that he refused to commit. On the Wrekin charge, however, he committed Bigland to take his trial at the Shrewsbury Assizes.

The position, then, was that Bottomley had succeeded in getting Bigland committed for trial on the libel issue at the Old Bailey, and on the blackmail at Shrewsbury. The libel case was to be heard first, in January, 1922, before Mr. Justice Coleridge at the Old Bailey. But Bottomley and his advisers had been doing some hard thinking, and when the case came on, Sir Edward Marshall-Hall, who appeared for Bottomley, asked for an adjournment on the grounds that the documents of the Victory Bond Club were in the hands of the Receiver, and that to meet a plea of justification it was essential that he should have a properly audited account. This was opposed by Mr. Comyns Carr on the ground that it had been obvious, from the proceedings at the Police Court, that the plea of justification would be raised and that the prosecution should have been prepared to meet that plea. Mr. Justice Coleridge ruled against an adjournment, and left the prosecution to proceed. This was precisely what the prosecution did not do, for when Bigland pleaded Not Guilty, Sir Edward Marshall-Hall, after a moment's consultation with Bottomley, got up and announced that the prosecution did not propose to offer any evidence on this charge. The result was, of course, that the case collapsed, Bigland was acquitted, and the prosecution had to pay the costs of the proceedings.

The object of this astounding manœuvre was to prevent Bigland from reading the lengthy plea of justification which had been prepared. Bottomley knew that the defence were apprised of his fraud on the Blind Widow of Toulouse, and suspected that she was available to give evidence in support of the plea of justification. The whole outlook was distinctly unhealthy, and he decided to proceed no further with this prosecution. Sir Chartres Biron thinks that he would have succeeded on his plea of justification, and no doubt there may have been passages in the forty-five paragraphs of his justification which Bigland might not have been able to substantiate. But with great respect to Sir Chartres and his authority, it would seem that Bigland must have proved so much that the impression made upon the Jury would prevent them from convicting.

However that may be, Bottomley chose to abandon this part of his assault on Bigland and to pin his faith on the prosecution for blackmail. In this he was actuated by three motives. In the first place the charge of demanding by menaces dealt with the stale

history of the Wrekin by-election and not with the absorbing topic of the Victory Bonds, in connection with which the public was clamouring for its money. Secondly, the case was to be tried at Shrewsbury, where less public attention would be concentrated on the proceedings than if it were tried in London. Thirdly, the Shrewsbury Assizes were to be taken by Darling, who had found in favour of Bottomley in previous cases and was reputed to like Bottomley. Here, as so often, popular repute was quite inaccurate.

The case came on before Darling in February, 1922, at Shrewsbury, whither he had travelled from Hereford in the old familiar round of the Oxford Circuit. It naturally aroused enormous public interest, for the two men were engaged in a struggle *à outrance* which must end in the destruction of one or the other. It was clear to Darling, as he entered the crowded court for the first day of the case, that the proceedings would be conducted in an atmosphere very different from the pleasant aura of humour which had surrounded those pre-war Bottomley cases.

Mr. Cecil Whiteley, K.C. (subsequently Common Serjeant) led the prosecution, and Mr. Comyns Carr appeared for the defence. The case started with lengthy legal arguments, as Mr. Comyns Carr applied to amend the indictment ; Darling ruled that he could not accede to this application. The tactics of the case centred round Mr. Comyns Carr's efforts to get Bottomley into the witness box so that he could repeat the success of his cross-examination as to credit in the preliminary proceedings before Sir Chartres Biron. Sir Ernest Wild had there made the mistake of getting Bottomley to give more than merely formal evidence, thus exposing him to the cross-examination as to credit. Mr. Whiteley did not intend to fall into the same trap, and argued that as Bottomley had not been present at the interviews between Bigland and the three men whom he was charged with inciting, he could give no evidence relevant to the indictment. Mr. Comyns Carr, on his side, argued that it was impossible to have a fair trial unless the evidence, which was on the depositions as having been given before Sir Chartres Biron (*i.e.* the evidence of Bottomley, Mr. Houston, the election agent, and Mr. Elias of Odham's Press), was before the Jury. To this argument Darling said, " There is no need to say that. I have the depositions before me and if I was satisfied that it is necessary for the truth of the enquiry to call Mr. Bottomley, Mr. Houston and

Mr. Elias I should do so unhesitatingly. If they are not called by the prosecution they will expose themselves to comment which I have no doubt will be made." It was a difficult position, but undoubtedly Darling was right in ruling that Bottomley's evidence was not necessary for the indictment. The sequel showed, too, that the interests of Justice were met by this decision.

Mr. Comyns Carr failed, therefore, in his efforts to subject Bottomley to another raking cross-examination. So strenuous had been his efforts, however, that Mr. Whiteley in commenting on them said, " Is he not carrying on the same form of blackmail ? " At this Mr. Comyns Carr not unnaturally protested. " Is that not an unusual allegation to make ? " he enquired of Darling. " The whole case is somewhat uncommon," was the wise and soothing reply.

So Mr. Comyns Carr had to be content with cross-examining the three witnesses whom Mr. Whiteley did call for the prosecution, that is to say, the three men whom Bigland was accused of inciting to blackmail Bottomley. The cross-examination was effective, but the tide did not set definitely in favour of the defence until the evidence of Bigland himself. Bigland's defence was that the whole story of the three men, whom he was alleged to have approached with a view to blackmailing Bottomley, was a complete fabrication. He then proceeded to give an account of his association with Bottomley and of his being awarded the third prize in the War Stock Combination Lottery. The third prize had been awarded to him for services rendered to Bottomley. Mr. Comyns Carr then asked him what services. " Introducing a man named John Greeney," replied Bigland, and there followed the whole story of Bottomley's faked libel action. While Bigland was narrating the episode Darling intervened, to comment, amid laughter, " I suppose I summed up in his favour, didn't I ? " But from that moment the case had turned against Bottomley, for if these things were not true, it was incredible that he should not go into the witness box to deny them on oath. But Bottomley, for the best of all reasons, was still coyly reluctant to take advantage of his rights and enter the witness box. Even Bigland's assertion that Bottomley had offered him £20,000 not to defend himself, so that it could be another whitewashing case like the Greeney trial, brought no contradiction.

In his summing up Darling did not fail to comment very

severely on Bottomley's failure to go into the witness box. He pointed out that Bigland's story did not necessarily prove that Bottomley had been guilty of all the things alleged. But there had been every effort made by Mr. Comyns Carr to drive him into the box, while Mr. Whiteley had countered by using all legitimate means to keep him out. " When all this has been given in evidence by the defendant, what do you think of Mr. Bottomley's still remaining silent ? It is a wonderful, almost an incredible, story as told by Bigland, and it might have been contradicted in one word by the man who is present and must know whether it is true or not. Bigland's story has been supported by documents, and not contradicted in one single particular by a word from the man who can contradict it. Not only that, but the man who could have contradicted the defendant has used every kind of artifice to keep himself out of the witness box. Not only has he not gone into the witness box, but he has used all the skill of his counsel to prevent a number of questions being asked which he might have to contradict."

In the circumstances it is not surprising that the Jury required only three minutes to find Bigland Not Guilty.

Mr. Whiteley had won the battle to keep Bottomley out of the box, but in doing so had lost the war. Bottomley left the Court unobtrusively by a side door. The next time he entered a Court of Justice he was himself to take his stand in the dock. His conviction at the Old Bailey was really inevitable from the moment he failed to contradict the astounding revelations of Reuben Bigland. When Bottomley left the Court at Shrewsbury, he was already doomed.

It has been suggested that Darling liked Bottomley, and took an unduly favourable view of him on account of his wit. This is not true. Darling liked the lighter side of Court life as much as anybody, but it never blinded him to the interests of justice. It has already been pointed out that the judgments given by Darling in favour of Bottomley were judgments in accordance with the correct interpretation of Law, and not at all dictated by personal considerations. In fact, as a man, Darling was profoundly shocked by the scope and entire heartlessness of Bottomley's frauds, and the fact that so many poor people in humble circumstances were his unfortunate victims ; and he frequently expressed himself in this sense. Curiously enough the manager and chef at the place where Bottomley stayed for the Shrewsbury trial were unfortunate

members of his Victory Bond Club. On hearing that this was so, Darling expressed his surprise that they did not poison Bottomley's soup.

As for Bottomley's attitude to Darling, writing in *John Bull*, in 1921, he expressed it thus: "I can pay this remarkable and brilliant Judge no greater compliment than by publicly expressing a hope that, if at any time by some unforeseen decree of destiny, I should find myself on trial for my life, he should preside at the trial. I should be assured of three things—justice, intelligence and mercy." If Bottomley was not actually on trial for his life at Shrewsbury, he had at stake all the things which made life worth living. But his admiration seems to have survived the disappointing result of that trial, for after he had come out of prison, when the conversation turned on Darling, he said, "Darling was the best Judge I knew. I won nearly all my cases before him. He nearly always summed up against me; but he was always right."

Darling was amused by Bottomley's compliments, but never deceived by them. On receiving a copy of the issue of *John Bull* containing the flattering references to himself he wrote to a friend: "A copy of *John Bull* of yesterday has been sent to me as it contains Mr. Bottomley's view of me as a Judge. He is really most complimentary, and I recalled the imprecation in the 'Arabian Nights' which says 'The blessings of the evil genii—which are curses—be upon you.' But he amused my daughter immensely by writing, 'I should think he is a dreadful tyrant at home.'" This letter, which contains Darling's private views on Bottomley and was written eighteen months before the revelation at Shrewsbury of Bottomley's trickery over the Greeney Trial, effectively and finally disposes of the suggestions that he was taken in.

CHAPTER XXIV

THE ARMSTRONG POISONING CASE

IN the Spring of 1922, Darling again went the old familiar round of the Oxford Circuit, and at Hereford Assizes found waiting for him a charge which was to become one of the *causes célèbres* of the century. The Armstrong Case was not one of those trials which, after exciting enormous interest at the time, lapse into oblivion ; it had a feature which has given it an enduring interest to those who take pleasure in scrutinising the annals of human conduct. Darling himself took the view that circumstances made it perhaps the most interesting case he ever had to try.

The element in the Armstrong Case that captures the imagination is the apparent incompatibility of the man with the crime he was proved to have committed. He was small-featured, high-collared, with pince-nez and a waxed moustache ; like Crippen, he was the very embodiment of The Little Man. Like Crippen, too, he became tired of the masterful and dominating personality of his wife. She had presented him with three children, who shared their home in the small town of Hay in Breconshire where he carried on a practice as a solicitor. He was not a very prosperous solicitor and, indeed, by 1920 found himself in financial difficulties. Nor was his domestic happiness such as to compensate for straitened financial circumstances. His wife was no doubt an admirable woman, but like some other admirable women she had the distressing habit of treating her husband as a small boy and bullying him in public. Thus it was her congenial habit, when her husband was enjoying a party, to say : " Herbert, you must come home at once ; it's your bath night." The gratification that might be derived from this emphatic testimony to his personal hygiene was less powerful in Armstrong's mind than the irritation at the self-confident and eccentric dominion of his help-meet.

Like the Little Doctor, the Little Solicitor grew restive ; like the Little Doctor, the Little Solicitor met another woman. He asked her to marry him after his wife's death. And surely this

could not be long delayed, especially as in August, 1920, she was taken to Barnwood Private Asylum suffering from delusions. In January, 1921, she was better, and was allowed to return home. Her loving husband insisted that her return should be unconditional and not on leave. Additional point was given to his consideration by the fact that a will cannot properly be made by one who is on leave from an asylum. And Mrs. Armstrong had a little property amounting to about £2,000. This Armstrong induced her to leave to him in a new (and incidentally improperly executed) will. After that she unfortunately got worse. On February 18 she completely lost the use of her limbs, and did not regain it. Nevertheless, she still retained her spirit and resolution. Three days later, in the early hours of February 22, she said to the nurse attending her: "I am not going to die, Nurse, am I? Because I've everything to live for—my children and my husband." However much she might want to live for her husband, the real difficulty was to live in spite of him. Six hours later she was dead.

Mrs. Armstrong was duly buried and the widower carried on life without her familiar admonitions as best he might. Not satisfied with the property which he had inherited from her, he thought it would be desirable to expand his practice in addition. With this praiseworthy end in view, he invited the rival solicitor to tea, and such was the eagerness of his hospitality that he pressed him to partake of a buttered scone which he offered with his own fingers. The unfortunate Mr. Martin, the rival solicitor in question, was taken ill, and arsenical poisoning was suspected.

Arsenical poisoning amongst the inhabitants of a small town like Hay is legitimate matter for local gossip. It was not long before Mrs. Armstrong's death was remembered, and exhumation of her body was accordingly carried out at dead of night, on January 2, 1922. Nearly three and a half grains of arsenic were found in her body. Two grains is a sufficient dose to cause death.

Armstrong was put on his trial at Herefordshire Assizes. Sir Henry Curtis-Bennett was briefed to defend him, and the Crown sent down Sir Ernest Pollock, the Attorney-General, subsequently Lord Hanworth, Mr. Vachell and Mr. St. John Micklethwaite. During the trial, Darling stayed with Mrs. Clive at Whitfield, the house he knew so well, and both Sir Ernest Pollock and Sir Henry Curtis-Bennett paid visits there. The movements of the Judge were

followed with close attention by the Press, which reflected an extent of public interest that is probably unparalleled. The Grand Jury had also found a true bill against Armstrong on the charge of the attempted murder of Mr. Martin, the rival solicitor. But in the event this charge was never heard.

There could be no doubt, in view of what was discovered at the post-mortem, that Mrs. Armstrong had died as a result of arsenical poisoning. The real question, therefore, was : Who had administered the arsenic, and how ? The theory of the defence was that she had committed suicide by poisoning herself ; the case for the prosecution was that Armstrong had been poisoning his wife by the administration of small doses of arsenic for months, and had finally eliminated her with a fatal dose within twenty-four hours of her death, at a time when she was incapable of movement. The defence's theory made very little appeal to Darling's common sense. Not only was there the evidence of her state of mind, as exemplified in the words already quoted. There was also the evidence of what she was able to do ; for some days before her death she was physically incapacitated, and after the 18th she could not even feed herself. In these circumstances the defence could not reasonably put the date of the taking of the poison later than the 16th ; but even at that time Mrs. Armstrong had not been able to hold a cup to her lips or to grip it firmly. Was it reasonable to suggest that she could possibly have got up on the 16th, measured the dose, and taken it ? The other difficulty confronting the defence in their effort to support their theory was to explain why death should only take place six days after the taking of the poison. The explanation put forward to meet this was that the arsenic had become encysted (*i.e.*, enclosed as in a box) in her inside. But the evidence of Dr. Spilsbury and Sir William Willcox was to the effect that from the conditions found in the dead woman's body this was impossible. It could also be seen, from the condition of the body and the organs and the fact that there was arsenic in the intestines, that a large dose of arsenic must have been given within twenty-four hours of death. Further, the condition of the liver in the absence of disease showed clearly that poisoning by arsenic must have been taking place over a considerable period prior to the final dose. The theory of suicide, therefore, could not be made to hold water.

But it is not enough for the prosecution to disprove the theories

set up by the defence. They must prove beyond all reasonable doubt affirmatively that the accused did in fact commit the crime. Now to help them with this the prosecution were able to trace purchases of arsenic by Armstrong on various occasions since 1914, sometimes in the form of liquid weed-killer, and sometimes as solid arsenic, culminating in the purchase of three tins of powdered weed-killer on August 4, 1920. They were able to show, therefore, that Armstrong alone possessed any arsenic in the house, and that he alone knew of the existence of any. He had also made a full statement to the police, but had not mentioned twenty ounces of white arsenic found at the back of a drawer in the bureau. His explanation of this was that he had it for the purpose of poisoning dandelions, but had forgotten its existence until, on being allowed to go through the contents of his pockets after arrest, he saw a little packet of white arsenic, which he had made up from it. This reminded him of the packet in the drawer, but he said that he had decided to make no reference to it until he had seen his solicitor. It was produced two days before the end of the trial by his Counsel, who argued that it proved his innocence because it accounted for the rest of the arsenic which would have been available for poisoning his wife, and which the prosecution suggested he had in fact, used to poison her.

Armstrong remained quiet and imperturbable under the cross-examination of the Attorney. He was then re-examined, and was about to return to the dock when Darling motioned him to stay, for he was desirous of putting some questions to him with regard to the white arsenic found in the bureau. The effect of the examination can best be gauged from its bare recital :

DARLING : In your statement to the police, when you were so particular to mention all arsenic, how can you account for having forgotten all that arsenic—the only white arsenic you ever had ?

ARMSTRONG : I cannot account for it.

DARLING : You had tried an interesting experiment by mixing it with caustic soda. That accounted for one ounce of it, and as to the rest of it, you had made it up into twenty little packets ?

ARMSTRONG : Yes, my Lord.

DARLING : And with regard to nineteen of them, you gave separate doses to nineteen dandelions ?

ARMSTRONG : Yes—I noticed that these dandelions died afterwards.

DARLING : That was very interesting, was it not ?

ARMSTRONG : It was at the time, but it had passed from my mind.

DARLING : Do you tell the Jury that you absolutely forgot about that white arsenic ?

ARMSTRONG : I do.

DARLING : And the dandelions ?

ARMSTRONG : The whole incident had passed from my mind while I was making that statement.

DARLING : Did it strike you afterwards that it was very remarkable to forget ? You are a solicitor.

ARMSTRONG : I follow that.

DARLING : Does it not occur to you that it would have been a very bad case for you if you had had to tell the Police that you had got not only weed-killer arsenic, but white arsenic in your possession ?

ARMSTRONG : But I did not remember it.

DARLING : That is not what I asked you. Does it not appear to you that if you had made a statement to the police that you had got arsenic in your possession it would have been a very bad thing ?

ARMSTRONG : It would have to be explained.

DARLING : You see that now ?

ARMSTRONG : Yes, quite ; now.

DARLING : When you saw the little packet, and you realised that you had got white arsenic in your pocket, did you realise that it was just a fatal dose of arsenic not for dandelions only but for human beings ?

ARMSTRONG : No, I did not realise that at all.

DARLING : If you were simply dosing dandelions, why did you make up that one ounce of arsenic into twenty such little packets wrapped in paper ?

ARMSTRONG : Because of convenience of putting it in the ground.

DARLING : But did you do it all in one day ?

ARMSTRONG : I dosed them.

DARLING : All at the same time ?

ARMSTRONG : Yes.

DARLING : Why go to the trouble of making up twenty little packets, one for each dandelion, instead of taking out the ounce and making a hole and giving the dandelions a dose from the ounce ?

ARMSTRONG : I do not really know.

DARLING : Why make up twenty little packets, each a fatal dose for a human being, and put them in your pocket ?

ARMSTRONG : At the time it seemed to me the most convenient way of doing it. I cannot give any other explanation.

DARLING : You are a man accustomed to criminal procedure. Would it not have been better to make a clean breast of it with regard to the arsenic in the bureau ?

ARMSTRONG : It did not occur to me. . .

DARLING : . . . So you ran the risk of the police finding it or not ?

ARMSTRONG : As your Lordship puts it.

DARLING : Is that so ?

ARMSTRONG : I did not think there was a risk. I thought it a certainty they would find it.

DARLING : Then why not try and get credit for yourself by telling them where it was ?

ARMSTRONG : I can only repeat that I thought I had better keep my mouth shut. At that time it was a great shock.

The effect of these questions, simple and direct as they were, is obvious to the reader. It was obvious, too, to Armstrong, and those who were in court observed that, unmoved as he had been throughout the cross-examination, he was visibly shaken by the Judge's questions. More than anything else this short interlocution ensured his conviction. Darling's summing up after the speeches was long and thorough as the facts of the case demanded. He analysed carefully the medical evidence and the bases, such as they were, for the suicide theory. Did the Jury believe Armstrong's explanation of his failure to mention the white arsenic in the bureau ? Did they believe his explanation that he had used the nineteen little packets similar to the one found on him, for the purpose of poisoning nineteen separate dandelions ? Armstrong had had plenty of opportunities of putting arsenic in his wife's food as he sat by her bedside with her alone ; and he had the means of doing so, if he had so desired. As for the motive, " It may appear inadequate to you, but you must remember that you will never in such a crime find a motive you will think adequate, though it may be so to a person with a criminal mind."

The summing up lasted over three hours, and the Jury retired at 5.8 p.m. on the last day. They were back by 5.56 ; a retirement

of less than fifty minutes was short for a case of such length and such importance, but it was enough for a decision after the course things had taken. The Jury announced their verdict of Guilty, and the Clerk of Arraigns put to Armstrong the usual question: "What have you to say why the Court should not now give the Judgment to Die according to Law?" In reply, Armstrong simply drew himself up and said in a strong voice the one word: "Nothing." Darling himself had no doubt that Armstrong was guilty, just as he had no doubt that Steinie Morrison, whom he did not consider to be proved guilty, was guilty. But, though he had not been impressed by the violent demeanour of the Russian Jew, he used to say afterwards that he was very impressed with the firm, restrained, and resolute bearing of Armstrong as he spoke his one word to the court. He proceeded, however, to sentence him, adding, "I feel bound to say that in that verdict of theirs I concur, and consider that it was the only one which men who had regard to their oaths could have returned upon the evidence that had been put before them."

Armstrong had one chance left; and his appeal was not the forlorn hope, put forward so that nothing should be left undone to save a man from the gallows, that it sometimes is in convictions for murder. This was because there was doubt as to the admissibility of the evidence as to Armstrong's subsequent attempt to poison Martin. Sir Henry had objected during the hearing on the ground that evidence of events which happened nine months after Mrs. Armstrong's death was irrelevant and prejudicial. Darling, however, after considerable thought ruled that it was admissible as showing that Armstrong "had arsenic in his possession, and would use it not only on dandelions but also on human beings." That he did give great thought to it may be well understood, since he was aware that if he admitted the evidence, and the Court of Criminal Appeal held that it should not have been admitted, it would have been enough to quash Armstrong's conviction and save him from the gallows. The Court of Criminal Appeal, however, held that Darling's ruling on this point was right and the conviction must stand.

An interesting side-light on the case is that it was suggested to Darling, in the course of the case, that one or more of Armstrong's children would be called to give evidence on his behalf. The interest of this lay in the fact that at a very famous murder trial held

just before the Armstrong Case, the daughter of the accused had been able to give very valuable testimony on behalf of her father who was acquitted. None of Armstrong's young children, however, gave evidence in fact. Armstrong himself passed out of the limelight which had so suddenly and unwelcomely been centred upon him on May 31, 1922, leaving his name to describe a case which was in Darling's words " a remarkable one, so deeply interesting that I doubt whether any of us engaged here today have in recollection a case so remarkable."

CHAPTER XXV

HUSBANDS AND WIVES IN THE COURTS

THERE were several cases coming before Darling in 1922 and the following year which, while lacking the stark elements that invested the cold-blooded murder of the Armstrong Case, had points of interest and curiosity, legal, sociological or in the sphere of human motive. Amongst these was the case of Captain Peel and his wife, which engrossed the attention of the public in March, 1922.

Captain Peel was a young cavalry officer who had married the daughter of very rich parents by whom she was allowed an income of £7,000 a year, out of which she gave her husband £200 a month. They were both keen followers of racing, and had taken a large furnished house in Avon Dassett, a little village consisting of a very few houses with a tiny post office which was also the general shop. This post office was managed by a man named Watts, with the assistance of a girl of sixteen who looked after all the telegrams, which she telephoned to the larger post office at Banbury.

Now the Peels' betting transactions had not been going too well, and, according to the story unfolded by the prosecution at the Old Bailey, they decided to exploit the post office arrangements at Avon Dassett to recoup their racing losses. The scheme was this: The Peels went into the post office at Avon Dassett on the afternoon of Saturday, October 8, with a view to sending telegrams to bookmakers all over the country, backing the winner of the Duke of York's Handicap, due to be run at 2.50 that afternoon. The plan was that the husband should go into the post office with his wife, present a bogus telegram and get Watts to put a time on it, the time to be earlier than the start of the race. His wife, meanwhile, would be using the telephone box so that this telegram could not be telephoned to Banbury. While in the telephone box, she was to be rung up from London and told the name of the winner of the race. She was to communicate this information to her husband,

who was to fill in the name of the winning horse on a sheaf of telegrams already written, hand them over to Watts, and get him to put the same times on them as he had put on the first (or bogus) telegram. The scheme would have gone very well but for one thing which defeated the calculations so astutely made: the race started ten minutes late.

The result of this was that Captain Peel, having handed in his bogus telegram (which referred to the Cesarewitch, to be run some days later) was left with nothing to do but wait about for the ten minutes or so that his wife was in the telephone box. The race was actually run at 3 p.m., and finished about two minutes later; the news, which was in London less than a minute later, was immediately telephoned down to Mrs. Peel, so she heard the result of the race at about three minutes past three. She then called her husband to the telephone box, and talked to him whilst he kept his back towards Watts. He then went to the door of the post office and paused as if to leave. Suddenly he stopped and producing his sheaf of forty-five telegrams, turned back to Watts with the remark: "Oh, I had almost forgotten these."

Watts said that he could not deal with such a number of telegrams by himself, and must fetch the girl. This was done; and they were telephoned through to Banbury, Captain Peel making them mark all the telegrams 2.45 p.m., which was the time inscribed on the bogus telegram. Watts knew nothing about racing, and said in his evidence at the trial, "We haven't another horse-racer in the village."

The people at the larger post office at Banbury were not so simple, however. On receipt of the second telegram timed 2.45 p.m., and not sent off until about 3.30, they made an enquiry as to whether the time was correctly inscribed. Captain Peel answered this enquiry, his wife not being present at the time, and said that it was all right. Now it was discovered that a call had been put through to Avon Dassett from a club in London at 2.52 p.m., which would have been all right if the race had been run punctually. As it was, however, the caller had to hang on for thirteen minutes, which attracted the attention of a telephonist at Banbury, who re-entered the circuit, and heard a man's voice talking. The suggestion of the prosecution was that this was the man who had later, by way of camouflage, wired the winner to Mrs. Peel, and to

whom she paid £200 shortly after this date. As a result of the telephonist's suspicions, certain of the bookmakers did not pay on these bets ; but the rest settled up in the ordinary way. Consequent upon the enquiries made, Captain and Mrs. Peel were charged with obtaining, or attempting to obtain, money from bookmakers by means of forged telegrams, while Captain Peel was also charged with uttering forged telegrams.

The case came up before Darling at the Old Bailey on March 8, he having returned to London from the Oxford Circuit. Such a distinguished array of Counsel—Sir Charles Gill, K.C., and Mr. Travers Humphreys for the prosecution ; Sir Henry Curtis-Bennett, K.C., and Sir Richard Muir for the defence—was fully justified by the circumstances of the case, for in addition to the unusual facts there was a legal point of much interest. This arose from the legal presumption* that husband and wife have only together one will, and that when they joined together in committing certain crimes, and the wife acted in the husband's presence, she was presumed also to act under his coercion. This presumption was only rebuttable by showing that the wife was the instigator or more active party, or that the husband, though present, was incapable of coercion as being weaker than his wife or bed-ridden or a cripple. The rule was definitely applied to certain crimes such as larceny, but did not apply to treason or murder.

The authority for this presumption is to be found, amongst other places, in Blackstone, where the rule is said to date from the laws of King Ina of the West Saxons, more than a thousand years ago. The position that arose in this case, therefore, was this : If the husband said that he was guilty of these crimes, would not the wife be presumed to be acting under his coercion in those acts in which they were both present ? And in the acts where the wife was not present, were not the acts and statements of the husband inadmissible as evidence against her ?

Darling's view of the position was this : " The rule with regard to coercion is an ancient one, based on the knowledge that husbands formerly beat their wives and subjected them to coercion by violence. I have myself seen it stated that so long as a man did not use a stick thicker than his thumb he might beat his wife.

* The presumption was abolished three years later by the Criminal Justice Act of 1925.

The situation is rather different now. Is it not notorious that in the time of King Ina of the West Saxons women were not nearly so independent as they are now? In any case, certain crimes were excepted from the rule, like murder and treason, which were crimes so heinous that it was supposed that even a married woman would revolt rather than commit them. I would be bound by any case quoted to me showing that the rule applies specifically to forgery; but no case has been quoted to me. I feel certain that Judges of today would not do anything to extend the doctrine beyond limits already fixed; and in the absence of a definite case or the text-books of some great writer, I decline to say that it applies here."

It was decided, therefore, to proceed with the case against Mrs. Peel, who came up for trial before Darling on the Monday of the following week. She made a striking figure in the dock, dressed in a smart black costume and furs, and remained standing until Darling told her that she might sit down.

For the prosecution Sir Charles Gill outlined the story of the manœuvres in the Avon Dassett post office, and called evidence in support of it. The surprise came when Sir Henry Curtis-Bennett rose, at the conclusion of the prosecution's case, to make two submissions. The first was that there was no evidence at all against Mrs. Peel because she had in fact left the post office before there was a discussion as to the time of the telegrams; and there was no evidence that, if she had learnt the winner by telephone and told her husband, she knew that the telegrams to the bookmakers had not yet been handed in. His second submission was that if there was any evidence against her, there was not in any case evidence to rebut the presumption of coercion. It was not, he said, for the defence to prove coercion. Darling disagreed with this assertion. "I said I would not extend the rule, seeing how things have altered the last few years in this country, where women are now serving on Juries and becoming Members of Parliament."

"And becoming competitors with Sir Charles Gill and myself at the Bar," added Sir Henry.

"I don't see what the Bar is to do, except marry them," said Darling amid laughter.

He then went on to emphasise the inappositeness of this rule to modern life. He pointed out that the rule was intended as compensation for women, who in those early days could not get

benefit of clergy because they were so uninstructed that none of them could read. Sir Henry replied that nevertheless it was in fact the Law, good or bad. He then produced his surprise. He had, in the time that elapsed since the last hearing, discovered two cases, one in 1813 and the other in 1814, in which the doctrine of coercion was definitely applied to forgery. (It will be remembered that Darling had said that in the absence of such cases he would not hold that the doctrine extended to cases of forgery.) On hearing Sir Henry's cases, however, Darling held that he was bound by the rule ; " but though I am bound to follow it, the reason for it has clearly gone and the Law ought to follow. I agree that it is a melancholy rule and to be followed but not commended."

In his reply, Sir Charles Gill stressed the fact that the rule was subject to exception where the wife took the more active part. This was just such a case on the evidence, which showed that she had a knowledge of racing, a separate bank account, a separate account with the bookmakers, and so on. In his view the whole matter was pre-arranged, and the husband was only there to help. Darling did not endorse this view. He would have held, if the prisoners had not been husband and wife, that there was for the consideration of the Jury evidence against Mrs. Peel of obtaining money with intent to defraud. " It is not enough to prove pre-arrangement. In this case there was pre-arrangement ; but the wife was in the husband's presence all the time while actually contributing to the conspiracy. I am unable to see from the evidence that Mrs. Peel did any individual act which was absolutely independent of the coercion of her husband." Therefore, on the Law, he held that Sir Henry's submission as to coercion was correct, and he directed the Jury to bring in a verdict of Not Guilty.

Captain Peel was then brought into the box, and evidence as to his character was given by his brother officers. Sir Henry then addressed Darling in mitigation, referring to his excellent War record, and pointing out that he had pleaded guilty to mis-timing the telegram, not to knowing the winner. Darling took as lenient a view as he could on the facts, as he did not believe that Captain Peel had really coerced his wife ; " I take it that you are not guilty of that cruel and wicked act of which the Law assumes you to be guilty. . . . Sir Henry Curtis-Bennett has referred to indirect punishment. It is right that the punishment, direct and indirect

together, which falls upon gentlemen of position who do dishonest things should be heavier than that which falls upon poor people, because in the case of people like the prisoner there is nothing which can be called temptation. . . . Taking everything into consideration, and with the deepest regret in the case of one who has deserved well, as educated people who join the Army invariably do, I cannot do less than pass on the prisoner a sentence of twelve months' imprisonment in the Second Divion."

" The prisoner," as a contemporary account informs us, " who was evidently deeply affected by the shame of his position, was then removed from the dock."

The Peel case was an example of the curious workings-out of the law of husband and wife as regards coercion. The case of *Gray* v. *Gee*, which Darling tried in the following April, was the first example of a type of case that has since become considerably more familiar. It was an action brought by a wife against another woman for damages for the enticement of her husband. As in the Peel case, there was much display of erudition, but as this was a civil action Counsel and Judge could wear their learning with a lighter air. The interest of this case lay not so much in the facts as in the legal argument that preceded it, as to whether such an an action would lie. There had been actions by husbands for the enticement of their wives, but never before had there been an action by a wife for the enticement of her husband. The issue was, therefore, succinctly defined by Darling as being " whether sauce for the gander was not sauce for the goose." For the defendant, Mr. Clements tried to differentiate the two cases, arguing that the action by the husband for enticement arose from the fact that originally the wife was her husband's property, and he was therefore entitled to compensation when he was deprived of her services and *consortium*. In early times she was his property, just as much as were his cattle.

DARLING : Do you mean an Englishwoman or a Choctaw ?

CLEMENTS : The English husband had, for example, the right to chastise his wife.

DARLING : Chastise is really *castigatio*, which properly means rebuke.

CLEMENTS : The right to claim for loss of *consortium* arose because the wife was regarded as a servant.

DARLING: Who was it said that "no slave shall breathe the air of England"?

CLEMENTS: I will leave it to your Lordship.

DARLING: Oh no, of course it was Lord Mansfield.

Mr. Clements then quoted the judgments of Lord Campbell and Lord Wensleydale in the case of *Lynch* v. *Knight*. Mr. Barrington-Ward, K.C., who appeared for the plaintiff, pointed out that in that case the Judges had been divided in their opinion, and in any case it was before the Married Women's Property Act of 1882.

"Do you suggest," asked Darling, "that since that Act the husband becomes the property of the wife?"

"It comes to that," replied Mr. Barrington-Ward, who went on to point out that the Common Law of England was not rigid. "It used to be said that the Common Law of England resided in the breasts of his Majesty's Judges," said Darling.

"A very happy residence," was Mr. Barrington-Ward's graceful comment.

"That, however," continued Darling, "does not justify what are called exploratory operations."

In coming to his decision on this interesting point Darling held that, as there had been disagreement in the case of *Lynch* v. *Knight*, he was entitled to form his own view. This he expressed with considerable wit and learning. "It is contended," he said, "that there is a fundamental difference between the rights of husband and wife, based on the fact that in former days the wife was the property of her husband. As Tennyson said, in 'Locksley Hall':

> He will hold thee, when his passion shall have spent its novel force,
> Something better than his dog, a little dearer than his horse.

"Marriage started with something that was very like property, because it began with the capture of the woman, and that was why a bridegroom had a best man, who was a brother ruffian, who, when the man had made up his mind to capture a woman, went with him. Then it became a matter of purchase. I am not altogether certain that the old practice has been altogether given up even now. . . . In this country, however, a woman was never the chattel of her husband. He had *potestas* (dominion) over her, but not *proprietas*, which was a very different thing. I have come to the conclusion,

therefore, that no distinction can be drawn to the effect that a husband can bring an action for enticement because his wife is his property and that the wife cannot because her husband is not her property. I think that an action such as this is entirely consistent with the principles of our Common Law, and the reason that it was never brought before was, not that there was not the right to bring it, but that the remedy had not been devised. The remedy has now been devised by the Married Woman's Property Act which gives a married woman the right to sue in her own name and for her own benefit."

So Darling decided that this type of action lay, and, despite the subsequent lack of success of the plaintiff in this case, women have from time to time availed themselves of his decision and brought actions for enticement, to the great gratification of the popular press and all right-thinking persons.

A little later, Darling tried another case which was also the first of its kind. This was the case of *Boam* v. *Beary*, in which Mr. Boam, the owner of the racehorse Ironore, claimed £700 in damages from Michael Beary, the jockey, arising out of the death of Ironore who had fallen and broken her neck in the Fullwell Plate at Kempton Park. Mr. Boam alleged that Beary had improperly crossed to the rails in front of Ironore, thus causing the accident. Beary's defence was a denial of negligence, pleading that he had been forced to cross the front of Ironore by the pressure of the outside horses at the bend. Mr. Patrick Hastings, K.C., said that it would be a terrible thing for sport if this action were to succeed: "Just imagine the Tottenham Hotspurs going on the field, each man with a writ in his pocket to serve on his opponents."

The plaintiff's claim that his only concern in bringing the action was to purify the Turf was characterised by Mr. Hastings as "grotesque impertinence." In spite of this, the Jury had the temerity to bring in a verdict for the plaintiff for 300 guineas. In some ways the case was an echo of the pre-war case of *Wootton* v. *Sievier*, for Darling showed himself still much concerned with the modern style of horsemanship, and put many questions to Lord Durham and Lord Jersey, both Stewards of the Jockey Club, who gave evidence in the case. He again expressed his own views in the summing up. "Nobody," he said, "would attempt to play polo sitting in the saddle as jockeys do nowadays; they would fall

over the horse's head. The modern seat in the saddle in flat-racing does not seem to me to be horsemanship at all. I am sure that Henry V did not sit in the saddle in the least like Tod Sloan or any of his successors."

Which went to show that in equitation, as in National affairs, Darling abided by his old views, and was not concerned as to whether they were fashionable or not.

CHAPTER XXVI

RETIREMENT AND RETURN: THE MR. A. CASE

IN the autumn of 1922 Darling completed his silver jubilee on the Bench, to which he had been promoted in 1897. He was, by this time, in the seventies, and though as active as ever, it was inevitable that his mind should turn to thoughts of that retirement which had been prophesied more than once, as we have seen, in the post-war years. A quarter of a century spent in the administration of justice is a long time; and Darling was impelled by that dual desire to leave an interval before death in which to do and see the things for which a busy life had not always left time, and, at the end of a long innings, to retire in order to make way for the younger generation. On November 12, 1923, therefore, he resigned his seat on the Bench.

Expressions of regret and of tribute were universal and unanimous. The Lord Chief Justice, his brother Judges, all ranks of the Bar, the press and the outside world joined in paying tribute to the senior Judge. His last case was an ordinary accident claim of no particular interest in itself. Mr. Harold Morris (subsequently, as Sir Harold Morris, Chairman of the Industrial Court), who was appearing as Counsel in the case, wrote a note to him:

Dear Judge,

I have read with regret the announcement of your retirement in the daily press this morning, and I should like if I may to say a few words of farewell at the conclusion of the hearing of the present case. Would you kindly send me a note to say if you would like me to do so.

Yours sincerely,

HAROLD MORRIS.

Darling's reply ran :

Dear Morris,

Yes—if you please. I am sorry to close an agreeable chapter of course—but it has been a long one.

Yours sincerely,
CHARLES DARLING.

Mr. Morris lost his case and said good-bye. Darling's note is characteristic of his attitude. It aptly illustrates his undemonstrative quality and distaste for superlatives. Twenty-six years on the Bench might well be considered an excuse for rhetoric or sentiment ; but Darling eschewed both. For him it was just an " agreeable chapter." He was sorry ; but there was compensation in that it had been a long one. He saw life steadily, and he surveyed it unperturbed.

In point of fact, the agreeable chapter was not irrevocably closed. In the following year pressure of work in the Courts, and a shortage of Judges, resulted in the need of extra judicial assistance for dispatching the cases. Darling was asked whether he would return and assist in coping with the lists. He gladly accepted a spell at the old familiar duty, and for some weeks the King's Bench Division occupied him once more. In the course of his short resumption of duty he tried a case which, in the facts that emerged in the course of it, was as strange a story as any that had been unfolded in his twenty-six years on the Bench. This was the famous " Mr. A. Case."

" Mr. A." was the pseudonym given to a young Eastern potentate in the trial of *Robinson* v. *the Midland Bank* which came before Darling in November, 1924. Mr. A. was not a party to the case, but he figured very largely in it, and the claim arose out of transactions in which he was involved. There was considerable speculation at the time as to whose identity was cloaked in this way and why it was so done. Mr. A. was, in fact, Sir Hari Singh, nephew and heir of the Maharajah of Kashmir. Darling decided, at the request of the India Office, that for reasons of State his name should be suppressed. His intentions in so suppressing it were good, and his reasons potent ; but his action was frustrated of its object, since public curiosity was certainly not diminished by the withholding of the identity of the mysterious Mr. A., and

consequently his part in the proceedings was all the more widely broadcast when his name did in fact—as was perhaps inevitable—become known.

The plaintiff, Ernest Robinson, was a bookmaker who had been brought up in Australia and had come to England in 1898. In December of 1908 he married a wife who was fortunate enough to inherit from her grandfather an interest in the business of Grasshopper pills and medicines. In the following year he went bankrupt but continued to live in considerable style, acting as manager of his wife's business and drawing a salary for so doing. In spite of this pleasant arrangement he and his wife gradually drifted apart; they remained, however, good friends. Consequently, when Mrs. Robinson took a fashionable house in Chapel Street, Belgrave Square, her husband did not live there but went to see her from time to time. The attractive Mrs. Robinson preferred the permanent company of one of her own sex, and got a Mrs. Bevan to live as her companion.

It must not be supposed, however, that Mrs. Robinson and Mrs. Bevan had an invincible repugnance to the society of the male sex. On November 11, 1919, being patriotic ladies, they attended the Victory Ball at the Albert Hall, where they found themselves occupying the box next to that of Sir Hari and his suite. Soon they were in conversation, for on that agreeable occasion no introductions were necessary. Four days later Mrs. Robinson and Mrs. Bevan were waiting outside the Savoy after lunch for a taxi, when a member of Sir Hari's suite offered to drive them home in his car. They went to have tea with Sir Hari, and it was not long before he and Mrs. Robinson were on terms of intimacy.

In the following month the two ladies agreed to go to Paris, where they were to meet Sir Hari and his native secretary and "have a good time." The ladies took a suite at the St. James and Albany Hotel, Sir Hari and his secretary nominally living at another hotel but in fact sharing the ladies' suite. Although all seemed to be going well until the party retired at 6 a.m. after a round of festivities on Christmas night, in the upshot a good time was not had by all. For the reasons for this we must go back a little.

Sir Hari Singh, in addition to his native secretary, had a European A.D.C. named Captain Arthur; Mr. Robinson, in addition to an attractive wife, had a friend named Noel Newton; Mr.

Newton, in addition to an astute mind and a dubious record, had a friend named William Cooper Hobbs, managing clerk to a firm of solicitors. Now it occurred to all these people that Sir Hari Singh had so much money that it was due to them to relieve him of some part of it as the price of his pleasant association with Mrs. Robinson. Accordingly, it was decided to entrap Sir Hari Singh on his Parisian holiday. The result of this was, that at 8 a.m. on that morning of December 26, there came a knocking on Mrs. Robinson's door some two hours after the parties had retired. She went to the door and opened it, and Newton strode into the room. According to Mrs. Robinson, he brushed passed her, looked at Sir Hari in the bed, said " Now I have got the evidence I want, I wish you good day, Sir," and walked out again.

Mrs. Robinson returned to England as soon as she could, saying that she must get back " before that brute sees my husband." Newton, however, was back before her and telephoned to Robinson saying : " Your wife has been going about Paris with a nigger ; it is the scandal of the place." Mr. Robinson, according to his story, said he would divorce her, and Newton took him to see his friend Hobbs, who was instructed to start divorce proceedings. Later, however, he had another interview, when Hobbs handed him £25,000 in bank notes which he passed on to his wife, who had to return £4,000 to Hobbs for his costs.

Now this £25,000 came from Sir Hari. But it was not all the money that *was* extracted from that unfortunate potentate ; for in the course of an action which Robinson brought against Hobbs and his firm of solicitors, he discovered that Hobbs had paid into the Midland Bank a cheque for no less than £150,000 endorsed " C. Robinson," and had instructed the bank to pay out from cheques so endorsed from that account. (As a matter of fact, Sir Hari had made out a second cheque for £150,000, but had had the good sense to stop payment.) Hobbs handed over £25,000, less £4,000 as already stated ; but he then presented to the Midland Bank a cheque for £130,000 endorsed " C. Robinson," on which he received payment. This money Hobbs did not pay over to Robinson. The action tried before Darling was brought by Robinson against the Midland Bank for £125,000, that being the balance of the £150,000 not paid to him. He claimed the money from the Midland Bank on the grounds that it was money paid in for his use and should have

been paid to him; alternatively, he claimed the £125,000 from the Bank by way of damages for their negligence in paying out to the wrong person.

The defence agreed that there was a conspiracy, but went further than Mr. Robinson for they suggested that there were really two conspiracies—an outer conspiracy consisting of the two Robinsons, Mrs. Bevan, Hobbs, Newton, and Captain Arthur; and an inner conspiracy consisting only of the three last named. The £150,000 having been first obtained from Sir Hari by threats of exposure it remained to divide the spoils. Then, according to the defence, the inner ring decided to pretend that they had received only £25,000 which they divided up, assigning £4,000 to each member of the outer conspiracy except Captain Arthur, who received £5,000. The remaining £125,000 which was not disclosed to the others, was divided (after deducting expenses) between Hobbs, Newton and Captain Arthur. Such was the suggestion of the defence, who contended that Mr. Robinson could not have any claim to the £125,000, for if it belonged to anybody it belonged to Sir Hari.

The extraordinary circumstances of the case, coupled with the concealment of Sir Hari's identity, aroused the most enormous public interest, and the Court was besieged daily by would-be spectators. They were, however, for the most part disappointed for accommodation was limited and curiosity had brought many distinguished people to the Court to hear the proceedings. Darling was in his old form, making occasional witticisms, and writing and dispatching his characteristic little notes. On the general facts and issue of this case, it did not take him long to come to a conclusion. Mr. Robinson was represented by Lord Halsbury, K.C., and Mr. Valetta, while the Midland Bank had as fine a string of counsel as ever took the field, consisting of Sir John Simon, who had refused the Woolsack some years before, Mr. Rayner Goddard, K.C., and Mr. Malcolm Hilbery (both of whom were to become High Court Judges) and Mr. Roland Oliver. After the plaintiff had given his version of the affair, he was subjected to a brilliant cross-examination by Sir John Simon. Sir John established that it was shortly after Mr. Robinson's second bankruptcy in 1919 that his wife had met Sir Hari. In his examination before the Official Receiver, Robinson had said that he was supported by his wife. "You have been

supported by your pretty wife for a good many years, now, haven't you ? " asked Sir John.

" No."

" Within six months of your second bankruptcy your pretty wife fell in love with Mr. A. ? "

" That I can't say."

" Within two months of that bankruptcy your wife took an expensive and fashionable house in Chapel Street ? "

" I had nothing to do with it."

" You can take it from me, £245, first instalment of rent, was paid in advance. Was the second instalment due in January, 1930 ? "

" I can't say."

" Was she able to pay it ? "

" I suppose so, it was paid."

" Yes, it was paid in Mr. A's money. I suggest to you that she had got through her money and that you had nothing and at the end of 1919 she had an adverse balance at her Bank. Was it not fortunate that she then fell in with Mr. A. ? "

Sir John then forced the plaintiff to admit, after disclosing to him that his wife's flat had been watched, that his wife had been receiving two men on alternate nights in her flat, and that he had always gone off at about 10 p.m. leaving them alone. She had been to Ostend with the second man, as whose wife she had posed in the hotel, while he had been in Ostend at the same time. After this evidence, Darling asked the plaintiff whether, at the time of the Mr. A. affair, he believed Mrs. Bevan to be a respectable woman. Robinson replied that he did not know her sphere of life. " Your own case," said Darling severely, " is that they both went to Paris and slept with men of a different race. The common sense view is that they are disreputable women, both of them."

Sir John then interrogated Robinson as to why he had never enquired from Newton for particulars of his wife's proceedings in Paris with the " nigger," suggesting that the reason was that the whole thing was a trap with the details of which they were all perfectly well acquainted.

" You learnt the position of Mr. A. on January 10th ? "

" Yes."

" And it was on the 10th that your mind turned from the divorcing of your wife to the receiving of a sum of money ? "

"No."

"Money was meant as a possible settlement about the time you learnt that the man was in a position to pay almost anything?"

"The question of money did not appeal to me; I wanted a divorce, but Hobbs said that the man did not want exposure, and I then said that any money that was paid I would pass to my wife. It was because of Mr. A's position that I consented to compromise the matter."

"It was out of a sense of public duty that you would not divorce your wife but let him pay a large sum of money instead? Do you think that £150,000 is worth the price of advertising your wife's dishonour?"

"I think that I am entitled to exonerate myself of complicity in any conspiracy."

"Mr. A. having been robbed, some of these people have swindled you?"

"I don't take that view of it. There is no doubt that that money was intended for me."

"As a result of the conspiracy between the A.D.C., Hobbs, and Newton you only got £25,000 and now you find £125,000 is available?"

"That is so."

At this point Darling took a hand. Turning to the plaintiff he put a few gentle questions.

"If you think that Mr. A. has been robbed of £150,000, why do you claim any part of it? Do you mean that if you get it you will regard it as trust money and give it back to Mr. A.?"

The plaintiff hesitated, and said he was not sure, adding that he proposed to settle the money on his wife.

"You are robbing Peter to pay Paul," said Darling. "Do you think that any decent woman would take money?"

"I know she has suffered intensely."

"Don't you think it would be right to offer it to Mr. A. first?"

"I don't mind in the least, and if you suggest it I would take the money from the Bank and Mr. A. can have it."

Here Sir John interposed again. "Will you execute an assignment of the money now, to Mr. A.?" he asked.

"Yes."

"Then I will have it prepared." With this, Sir John sat

down, the cross-examination ending, after Darling's intervention, on a note almost of comedy in the plaintiff's reluctant renunciation.

Mrs. Robinson was similarly subjected to a brilliantly effective cross-examination by Sir John Simon, who suggested that the Newton episode was pre-arranged and the outcome of the scheme formulated by the conspirators beforehand.

" Let us see," asked Sir John ; " how many of the people whom I suggest were in the plot went to Chapel Street before you started for Paris ? Did the A.D.C. go ? "

" Yes."

" Did Newton ? "

" Yes."

" Did Hobbs ? "

" Yes, once."

" Did Mrs. Bevan ? "

" Yes, she was living with me."

" And the other two were yourself and your husband ? So it turns out that all the six people in this plot were all at Chapel Street before you and Mr. A. went to Paris."

The rest of the evidence for the plaintiff was concerned primarily with the tracing of the note in order to prove that Hobbs, Newton and the A.D.C. had had the money. Hobbs was himself called on subpœna by the plaintiff to produce certain documents with regard to " the division of the spoils." He said that he had not got these, as they were in Paris.

" Telephone for them, then," said Darling.

" What, to France ? "

" Yes, after all we have heard of the money you have had you can afford to telephone to France ; and you do it."

At the conclusion of the plaintiff's case, Sir John Simon submitted to the Judge that there was no case to go to the Jury. He said that it was evident that the money was Mr. A.'s, since it was stolen from him by menaces, and therefore it never was, and never could be, Mr. Robinson's. Further, it was ridiculous to say that when a cheque was paid to a firm of solicitors the money was the property of their clients : they could pay it into their own account or call the account anything they like, *e.g.*, a fictitious person such as " C. Robinson." Nor in this case had Hobbs ever had any intention to open an account for the plaintiff who could not, in any

event, approbate and reprobate—as the Law says—at the same time ; that is to say, if he adopted the paying of the money into the bank by Hobbs as his agent, he could not refuse to adopt the paying-out. With regard to this, Darling said that he had heard the proposition, " What's yours is mine, and what's mine's my own." He decided that he must leave the case to the Jury because the conclusion on points of Law depended on a decision on the facts, which he was not entitled to find for himself. They were a matter for the Jury, and must be left to them.

After a very full opening, Sir John Simon called Newton as his first witness for the defence. Newton started by denying the allegation of the plaintiff that he had begun his acquaintance with Mrs. Robinson by seducing her ; he then went on to give his version of the plot. The details, according to Newton, had been carefully worked out in conference at Chapel Street, where it had originally been intended to spring the trap. Owing to the uncertainty of the times of Sir Hari's visits, however, and the consequent irksome necessity of watching the house, it was decided to transfer the *mise en scène* to Paris. It was decided that he should play the part of husband, as he made a more presentable husband for a society woman than Mr. Robinson, who " looked like a butcher." He then described the visit to Paris where he stayed at the Westminster Hotel. " I never stay at such an expensive hotel myself," remarked Darling.

" But your Lordship has not been to Paris to earn money, only to spend it," Sir John reminded him.

Newton then went on to give his version of the bedroom scene. It had been arranged that the doors should be unlocked, and he knew in advance which was Mrs. Robinson's room. When he walked into the bedroom Mrs. Robinson jumped out of bed, crying ; " My brute of a husband," setting about him with such hearty goodwill, scratching and slapping, that he had to tell her in an undertone that the interests of realism did not demand quite this degree of violence. Sir Hari, too, had tried to calm her, pointing out, reasonably enough though in fact, untruly, that it was, after all, her husband. When Newton was asked how Mr. A. had looked during these proceedings he replied, " If it were possible for a coloured gentleman to turn green, he did."

Though Newton was severely handled by Lord Halsbury in

cross-examination on his past record, he did not contradict himself and emerged from the ordeal bloody but unbowed. After Sir John and Lord Halsbury had addressed the Jury, Darling summed up on the facts. He summed up strongly in favour of the finding of a conspiracy, which on the evidence could really not be doubted, and on the whole strongly against Robinson. He left the facts to the Jury in the form of six questions. They are here listed with the Jury's findings.

1.	Was there a conspiracy to entrap Mr. A. ?	Yes.
2.	Was the plaintiff a party to it ?	No.
3.	Was Mrs. Robinson a party to it ?	No.
4.	Was Mr. A. induced to pay through fear ?	Yes.
5.	Did the Bank in paying out the £150,000 obey the mandate they had received ?	Yes.
6.	Did Hobbs, in drawing out, purport to act under the same authority as in paying in ?	Yes.

The hearing of the case had occupied Darling and the Special Jury for eight days. After the finding of these facts the case was adjourned for judgment on the facts until the following Tuesday. On that day counsel first argued the legal position. Sir John contended that on the facts as found, the money could not be Mr. Robinson's, as it had been taken improperly from Mr. A. Further the Midland Bank had obeyed the instructions they had received. He quoted the leading case of *Vagliano* v. *the Bank of England*, and said, that " C. Robinson " was a fictitious person, just as Pickwick was. Dickens had walked through the streets before and seen the names Pickwick, Winkle, Tupman and Snodgrass above shops and used them.

" I know how he got the name Pickwick," said Darling. " Pickwick was the name on the coach which ran from Bath on the London Road, and I have often been at the Meet of the Beaufort Hounds close to Pickwick which is the name of a village. Moses Pickwick was a foundling who was picked up, taken to the workhouse and called Pickwick. He succeeded in the world and his name appeared on the coach by which Dickens went to Bath. That is how he got the name."

Lord Halsbury, in his reply, said that he appeared now for a man whom the Jury had said was a perfectly innocent man, but Darling reminded him that he had not left that point to the Jury.

Lord Halsbury continued his argument by saying that Mr. A. had voluntarily offered the money: if there had been duress it was legitimate. " I cannot help thinking," interposed Darling, " what a pity it is you were not counsel for Dick Turpin."

Darling summarised the plaintiff's case as that of a man who was asking to join the Board of Directors of a company after allotment. What he was saying amounted to this: " It is true I was not a conspirator, but I wish to ratify what they did." This is precisely what he was not entitled to do, and judgment, therefore, was entered for the Midland Bank. There then arose the question: was the plaintiff entitled to the costs of those issues in which the Jury had found in his favour?

On this Darling said: " The King's Bench Division has been called from earliest times to be the guardian of good faith. Is it good faith for the plaintiff to try to make profit out of his wife's adultery? This is an action that ought never to have been brought, and which could not have been brought by a man whose mind was not thoroughly debased. The plaintiff will have no costs in this action. There will be judgment for the defendants with costs."

So ended a case which exhibited in startling measure such a diversity of knavery. In the following year, Hobbs was put on his trial for blackmail, and was convicted. In Darling's view, however, out of the many competitors for the position of this unsavoury affair Captain Arthur (who incidentally had never served in the English Regular Army) attained the pre-eminence of villainy.

At the end of that term, shortly after the conclusion of the Mr. A. Case, Darling again left the Bench to resume his well-earned retirement.

CHAPTER XXVII

DARLING AS JUDGE AND WIT

IT is one of the paradoxes of the English that, while they are the most amateur people in the world, they have at the same time the most pronounced reverence for the specialist. They have an instinctive conviction that nobody is capable of doing two things well. They like to enclose successful people in the compartments of their own callings ; having satisfactorily pigeon-holed them, they resent any effort on the part of the successful ones to overlap the boundaries laid down for them. In France, a politician is expected to be a man of culture ; in England, his sincerity and representative value will alike be suspect if he is tainted with culture. The idea of an English lawyer is a dry and dusty man, whose interest is bounded by the Law Reports and the text-books. As for the literary man, he is an unpractical creature, who occasionally makes a lot of money by appealing to the good taste of the non-literary public, but whose chief use is to leaven hesitant aldermanic eloquence in after-dinner speaking. It follows that the English do not expect a man to combine two functions in his person. If a barrister goes into Parliament, it is assumed that he no longer intends to take his legal duties seriously. If a politician happens to practise at the Bar, it is assumed that his only interest in politics is the opportunity it affords for obtaining legal preferment. If a barrister writes a book—or even reads one—it is promptly suggested that he has no further intention of carrying on with his practice at the Bar. Such, in Great Britain, are the drawbacks of versatility.

It can readily be imagined from the foregoing that Darling was confronted with considerable obstacles in his career, by reason of his refusal to adhere to the one-track standard. He started life as a literary barrister ; he continued as a barrister-politician ; and he ended up as a literary Judge, who made witticisms on the Bench. It was inevitable that this refusal to be bound by the humdrum convention of specialization should lead to suggestions that his versatility was incompatible with a completely successful achievement

in any sphere. In point of fact he obtained considerable success in all, for individual Englishmen can, and repeatedly do, combine versatility with industry and conviction to an extent which other Englishmen are notably reluctant to recognize. As a barrister, Darling was fairly successful, but not outstandingly so. As a writer he was not in the first rank, though the spur of circumstance might have pricked him to a closer attainment of it. But it is as a Judge and as a wit that he was known, and it is as such that posterity will rank him.

His methods on the Bench, his qualities and his limitations have in great measure appeared from the account of him at work, given in preceding chapters. It is no good judging him by standards which he did not pretend to satisfy. He was not a profound lawyer with the depth of legal erudition possessed, for instance, by Lord Sumner, Lord Justice Scrutton or Mr. Justice McCardie. Nor was he a good Judge for a commercial case ; he had little knowledge of the workings of finance and little interest in the type of case of which finance was the subject matter. Perhaps his main weakness as a Judge was a certain natural and instinctive impatience in his approach to cases of which the subject matter did not command his interest. What did interest him was the stuff of human life. In these cases which held the mirror up to nature, he was at once interested and extremely efficient. He had in high measure that interest in the things that pertain to human life, and that knowledge of the intricate workings of human nature that springs from it, which, united to a sound knowledge of the Law, are the best equipment for judicial office. It was because he possessed this felicitous combination of qualities that Darling was able so quickly to dispel the doubts which clouded his advent to the Bench. He was, as we have seen, a good Judge from the start, and a far better one than perhaps even his friends had anticipated. In the course of his long discharge of judicial functions, he accumulated a vast experience of the ways of men and the workings of their minds, on which he could draw to guide him in the difficulties of human judgment which confront a Judge.

This knowledge of human nature and this ability to sum up the realities of a case is of prime importance to a Judge. It is often thought, by those not in the legal profession, that a famous Judge spends his time in trying *causes célèbres*. The fact that this is not

so has been stressed in this book, and if the foregoing pages appear to deal largely with cases of particular dramatic, sociological, legal or personal interest, it is because these are those which remained in the Judge's memory, and are of interest to the reader. A great deal of a Judge's time is spent in trying cases of no particular significance except to the parties themselves ; though to them they are naturally of paramount importance. A case which occupies a Judge for an hour or so may well have dominated the thoughts of the parties to it for a twelvemonth. That is why the careers and personalities of Judges are of such vast interest and importance to members of the public. In the modern world, where the issues of peace and war are in the hands of a few statesmen, the ultimate fate of the citizen is more absolutely in the hands of politicians than was ever the case in the days of autocracy. But though our ultimate fate is in their hands, our immediate fortunes very often lie in the hands of our Judges. To their high quality the community owes much.

This aspect of judicial importance is well illustrated by the case of a stationer towards the end of the War. It was simple in its features. A small boy was making a nuisance of himself, as it is the nature of small boys to do, outside a stationer's shop. The stationer sent his assistant out to tell him to go away. As she did not come back after a minute or two, he followed her out and found that the boy had his fists up to her. On seeing the stationer, the boy ran away and in doing so tripped and fell into the road, where he was knocked down and hurt by a motor-car. A few days later the stationer received a writ claiming damages, as it was alleged that he had pushed the boy and thereby caused the accident. Mr. Benjamin, for this was the stationer's name, was at that time in bad health and worried, as was the rest of the population, by the course of the War. Nevertheless, conscious of his own innocence in the matter he resolved to contest the action. But it was an added weight on his mind, from which he could not escape. Thus, he noted in his diary at the time of the Armistice : " The only pity so far as I am concerned is that I cannot join in the actual joy as my heart dictates, owing to that wretched case coming on this week and my health being so bad I fear to face the ordeal. But with God's help I will be brave. He has helped me before. I try to think of the difference between the great news and my small affair,

but somehow one's own troubles will rise above everything else. One's own world is so small. How glad I shall be when it is over, and what an eleven months' worry it has been!"

When the case came on Darling quickly saw from the evidence what had happened, and gave judgment for the defendant. The next day Mr. Benjamin noted in his diary: "What has been the greatest trouble in my life next to my constant bad health, disappeared yesterday when Mr. Justice Darling said: 'I give judgment for the defendant with costs.' I do not expect the costs, but even that—a matter of over £60—is nothing compared with the relief obtained." Nearly twenty years later Mr. Benjamin wrote to Lord Darling's biographer to pay his tribute to the Judge whose instinct for the true facts of the case had lifted such a load from his mind.

This is but one instance out of many that could be quoted of Darling's flair for the understanding of a case. He was by common consent a good Special Jury Judge, a good Circuit Judge, a good Criminal Judge, and a good judge of facts generally. As Mr. Justice McCardie used to say, he was a very good Judge in an unsensational case. He knew just when to be firm, and when to introduce the human touch. Those who thought that because he had a reputation as a jesting Judge they could take advantage of him were doomed to disappointment. Thus on one occasion, when he was trying a Jury case, a witness gave evidence which was palpably false both to Judge and Jury. As the witness was about to leave the box Darling stopped him, and asked him how he got his living. The witness replied that he was a plumber. "I want to give you a word of advice," said Darling. "Stick to the plumbing and don't get mixed up in the Law Courts." The man laughed loudly, and turned to leave the box, but was again stopped by Darling, who leant his head on his hands and said very quietly: "I want to tell you something else. Now listen very attentively." At this the man smiled again. "The Law of England," Darling told him, "is a very strange one; it cannot compel anyone to tell the truth." At this the man smiled again, and Darling continued, in calm and decisive tones: "But what the Law can do is to give you seven years for not telling the truth." The man collapsed instantly, and had to be helped from the box.

Another instance, which was observed by Sir Cecil Levita, took

place at Newcastle Assizes in the 1900s. Darling was trying a murder case in which the defendants sought to show that the prisoner was insane. A doctor was giving evidence for the defence, and his last question in re-examination was a general one as to whether, in his opinion, the prisoner was insane. The doctor replied, " Yes," and turned to leave the box. But Darling was watching him and called him back. " Will you please tell the Court, Doctor, what it was you said when you turned to go away ? " The doctor appeared confused and replied that he had said nothing. " Oh, yes, I think you did," said Darling. " Please repeat it to the Court." The doctor again failed to reply. " Very well," said Darling ; " I must question you. After you had said ' Yes ' in answer to Counsel's question as to whether the prisoner was insane, did you add, as you turned to go from the box, ' as all murderers are ' ? " The doctor had to admit that this was so and started to explain. But Darling cut him short, telling him that he did not require more than the answer to his question to reach the Jury. And so the weight of the doctor's evidence was discounted, as he was revealed as having preconceived opinions.

But Darling knew when to temper justice with mercy. He was always kind and human in dealing with unfortunate young girls whose emotional weakness had got them into trouble. On many occasions he knew that the distress and fright they had endured was punishment enough. At Chester Assizes before the War he once had to sentence a girl who, having been seduced by her employer, had attempted to commit suicide. Before passing sentence he asked whether she had any female relative in court. Her stepmother was there, and Darling asked whether she was ready to take the girl home and provide for her confinement. On her replying that she was, he said that on that condition he would bind her over to be of good behaviour. The Clerk of Arraigns gabbled the binding over formula, ending with the usual, " Are you content to be so bound ? " The girl simply gaped, understanding nothing. Seeing that she did not understand, Darling leaned over his desk and asked her : " Will you promise *me* not to do it again ? " She understood at once and gave her promise.

But he was not what has been called a sociological Judge, though he had sound views, strongly held on matters of social importance. We have seen in an earlier chapter that after he had

been on the Bench only a very short time he expressed his views on the subject of passing the death sentence when death followed an abortion. We have seen, too, his views on the death sentence, and on insanity in relation to murder cases. The question of insanity was one on which he held strong views throughout the period of his tenure of judicial office, and he even contributed to the Press on the subject after his retirement. He wholeheartedly dissented from the point of view that people must necessarily be insane in order to commit murder. Long experience taught him that, on the contrary, many murders are committed because the advantage to be derived from them weighs more heavily in the balance than the risk of detection and the consequence involved by it; how many more murders of this type would there be, if detection was not to involve hanging? He resented the efforts of some members of the medical profession to substitute a medical view of insanity for the legal view. He expressed his attitude with regard to this in the Parry Case, described in a previous chapter, when he directed the Jury in these words: "You must take it from me that the Law of England as to the sanity of a prisoner is laid down in the King's Bench and not in Harley Street."

Another matter less grim, but sociologically no less important, was that of marriage. Shortly after the War Darling tried a remarkable breach of promise action in which the defendant admitted a promise to marry made before the War but pleaded that he had been wounded in the War and was in consequence entirely unfit mentally and physically to marry. Darling took the view that the defendant's decision was a very reasonable one and in the interests of both parties. He added: "Many people nowadays regard marriage as a mere trifle, and bigamy as only a little more serious; but I do not take that view. Marriage in this country is still nominally a contract for the life of the two parties. Of course I know, when I think of another department in this building, that that is not actually the case; and in a short time, if it is a contract for a year that is probably about as much as it will be. However, at present marriage is a very serious undertaking in Law and it will remain serious, however the Law is altered, for the reason that it generally results in the birth of children. The interests of the children will have to be considered by the State and the Law always."

We have seen something of what the public, the Press, the

legal profession, and the parties who appeared before him thought of Darling as a Judge. What of the Jurymen, who officiated at the trials over which he presided? The Juries were nearly always appreciative of Darling as a Judge, not only because of the light relief which he so often and successfully introduced into the case if circumstances warranted it, but also because of the humanity and clarity with which he invested the proceedings. This is one example of many, which shows how Darling appeared to Jurymen who served in his Court: "I have always said to my friends that a more sensible and kind man could not be found; he struck me as a man who wanted to make things clear. He would not suffer fools gladly, but he held the scales true."

This was written after Lord Darling's death, but there is evidence that he very early made this favourable impression upon Juries. In 1900 he received a letter from a Juryman, which he kept until his death. Naïvely as it is written, the sentiments expressed are obviously genuine. It ran as follows:

Mr. Justice Darling.
Dear Sir,

It's been my privilege to serve under you as a juryman during the present week. Indeed now I look upon it as a privilege. When I got the summons I was not a little disconcerted at having to give a considerable portion of my time to a job like this. I may say I was never in a Court of Justice before; consequently I was not aware of the treat I had in store. A more lovable, prepossessing sort of chap than yourself I never met with. Quiet as a lamb but let anyone try and prevaricate and then you are the British Lion with his tail trod on. I suppose I'm an ass for writing to a man in your position like this but them's my sentiments and practically amongst our lot of jurymen I'm not the only one who shares this opinion, though possibly they are not such fools as to express themselves in this manner. First impressions are generally fairly correct and it would have taken an earthquake or something very inconceivable to shake the opinions I have formed as regards yourself. Its been a fair treat to have a chap like you talking to us as you have done during the present week.

This is really the heart-felt testimony of a chap who has

only known of your existence for about five minutes in a sense, and to serve under you has given him a sort of real pleasure which seems almost impossible to put into words by

A COMMON JURYMAN.

There were many appreciations of Darling as a Judge with all the sincerity of the Juryman's letter, but without its naïveté of expression. It will suffice, however, to quote only the most authoritative of all, that of Lord Hewart, who summed him up as "a wise, experienced, and humane Judge, with a consummate knowledge of human nature and the world." That might well serve as Darling's epitaph as a Judge.

If his position as a Judge became unassailable with the years, his status as a wit was impregnable always. But his judicial duties never suffered from the fact that he was a wit. Newspaper readers might sometimes form the opinion that nothing except jesting was ever done in King's Bench 4, just as they might think that very little happens in Parliament except the occasional interjection of back-bench members of the Opposition. Naturally the witticisms were reported in the Press more fully than the duller proceedings out of which they arose; but this did not mean that they took up more than a fraction of the time in Court. Neither Darling's sense of justice nor his sense of the dignity of his position was ever allowed to suffer from his proclivity for epigram. That is why Max Beerbohm's famous and clever cartoon of Darling asking his Marshal to have some bells sewn on his black cap is basically unfair in the impression it gives. Not only was Darling the last man to take lightly the sentencing of a fellow creature to death; he was also the last man to compromise the dignity of his judicial position. Nor was his humour in the Courts ever irrelevant; one of its most striking features was that it was so extraordinarily *à propos*. Indeed, in Jury cases his witticisms very often served another useful purpose in addition to that of providing some light relief, which would assist the Jury in keeping their minds on the task; not infrequently they constituted the most effective method of epitomising the point for the benefit of the Jury.

Of the quality of his wit, there can be no question. Like other great humorists of the spoken word he suffered somewhat from his reputation and his reporters. There was always that sycophantic

element ready to laugh its applause if Darling so much as asked the usher to shut the window. It was also suggested by those who were never anxious to give Darling his due that his wit lacked the quality of spontaneity, in that all his best jokes were prepared. It is true that occasionally his *jeux d'esprit* were prepared and led up to; and it was not entirely an unknown thing for Counsel of a literary turn, who asked for a book at the Bar Library from which to make a reference in a case before Darling, to be told that the book had already been taken out by Mr. Justice Darling. But these instances are negligible compared with the enormous number of occasions in which his wit was expressed in entirely spontaneous utterance. Indeed, the very nature of the circumstances in which witticisms are made from the Judicial Bench make it impossible that the humour should be premeditated as a rule. In fact, as the examples of his wit show, one of its foremost characteristics was a lightning rapidity of allusion.

Like most famous wits, Darling had many epigrams and anecdotes fathered on him of which he was innocent of the authorship. A good example is the aphorism, "The Law is open to all like the Ritz Hotel." This epigram, which is undeniably clever, is fairly well in the early Darling manner; but he was not responsible for it, and it is probably an improved version of Tom Paine's "The law, like the tavern, is open to all." But the best example of a remark being attributed to Darling which he never made, is the well-known story of his conversation with the lady at the dinner-table, who is reported to have said to him: "I never know whether to call you Judge Darling or Mr. Justice Darling?" To which he is supposed to have replied, "Just call me Darling."

He never made this remark, nor is it in the Darling vein of humour. It was invented perhaps by some clever journalist working on the theory that it was good enough to be true. Be that as it may, it obtained so wide a currency that scarcely an obituary notice appeared of Darling which did not contain a reference to it.

There were, indeed, so many instances of Darling's brilliant repartee and witty improvisation that he did not stand in need of these fortuitous additions to the armoury of his wit. He was gifted with that lightning association of ideas that is the basis of extempore humour. Many examples have appeared in the course of this book, but one or two more may not be out of place as illustrations.

On one occasion he was trying a case in which a lady was endeavouring to recover possession of a piano that had been seized in execution. In the course of the case it appeared that she had got the piano from a sale of goods taken by way of distress. She was asked what sort of piano it was, and replied, a Brinsmead. " Oh," said Darling quickly. " I thought it might have been a Collard & Collard."

On another occasion a witness said that he had gone into the Elephant to make a telephone call, at which Darling enquired whether it had been a " trunk " call.

His more studied epigrams appeared in his writings, and were more closely worked out, though lacking something of the spontaneity of his verbal utterances. Instances of these have already been quoted, and such epigrams which belonged to the early period, deserve high praise ; yet he himself preferred his more spontaneous witticisms.

On one occasion before the War the late Mr. Alexander Wedderburn, K.C., an old friend, asked which of his judicial witticisms pleased him most. Darling replied that he would make his selection if Mr. Wedderburn would make his too. The latter's choice was the occasion during the Kensit trial for disturbing a service in St. Paul's Cathedral, when Counsel for the prosecution submitted that *any* interruption of a church service came under the legal definition of brawling. At this Darling said : " Is not that putting it rather high ? To take, for instance, a quite impossible case ; suppose someone were to say ' Encore ' at the end of the sermon ? "

Darling's own choice was his remark in the *Grahame* v. *Fuller* trial, already noticed in a previous chapter, when he recalled that the poet Gray had been inspired to write the immortal line " Where ignorance is bliss, 'tis folly to be wise " by the distant prospect of Eton College.

This did not remain Darling's final choice, for in the last year of his life he gave me a different answer to the same question. He then considered his best witticism to have been one made when a witness said he had received certain information from a lady called Vera. He was rather vague about her, and when asked by Darling where he last saw her he replied : " I can't be quite sure, but I was waiting outside Dover Street Underground Station, when a taxi drove up and a lady got out and ran down the stairs." Darling

asked whether that was Vera. He replied : " My Lord, I won't swear that, but to the best of my belief that was Vera the last time I saw her." On hearing this Darling at once said : " *Se non era Vera era ben trovata.*"

After reciting this to me, he said with a little twinkle : " That was the best thing I ever said ; but there were much better things which I never said."

Probably not many people would agree with Darling's own estimate of his best witticism, for the good and sufficient reason that they would not understand it. Among those who failed to appreciate its significance was regrettably myself. He had a great facility for making witticisms in foreign languages. In an early case an eminent expert witness was in Court with his left eye bandaged. Darling sympathised with his accident and the witness said : " My doctor allowed me to come but my wife forbade it, my Lord." " In that case," said Darling, " you are here by virtue of *Jus mariti.*"

A grimmer note was struck in the Baby Farm Case, where a man was charged with the murder of infants. In answer to a question by counsel he replied that, if babies were sleeping he did not always find it necessary to waken them. " Ah," said Darling, " *Vigilantibus non dormientibus.*" The remainder of the legal maxim goes " *leges subveniunt* " (It is the policy of laws to aid those who are on the alert, and not those who are asleep).

Many of his happy inspirations in Court were not known to the public, for they were merely communicated to Counsel or others in Court in the little notes which Darling was so fond of sending. This habit of sending notes he maintained even in the grave atmosphere of the Judicial Committee of the Privy Council. In 1926 an Australian appeal was tried there, *Scales* v. *Aitken*, in which appellant was a widow who claimed that a fortune, ostensibly left by her husband as his own, represented in fact her own savings of some £12,000 or more in cash, which she had buried in her garden. She had earned this money as a washerwoman and clairvoyante, put the money in boxes, buried the boxes, and planted lilies on top of them. This story greatly amused Darling, who during the hearing scribbled the following lines, which with great gravity he handed to an usher to give to Sir Gerald Hurst, K.C., appearing as Counsel for the respondent.

Effodiuntur Opes.
Of spouses two accounts in Banks were kept—
Neither does all their hoarded wealth disclose,
Money within their garden, buried, slept:
Dig, then, that " Bank whereon the wild thyme grows."

An earlier occasion was when Darling tried the libel action which Mr. J. H. Thomas brought, in 1921, against the editor and publishers of a paper called *The Communist*. The gravamen of the libel was that Mr. Thomas had betrayed the miners in the strike of the preceding April, which had ended in what was known in certain circles as Black Friday. Mr. Douglas Hogg appeared for Mr. Thomas, Serjeant Sullivan and Mr. Maurice Healy for some of the defendants, while the publisher, Mr. McManus, appeared in person. The burden of Mr. McManus's speech was, " We trusted him; and then came Black Friday." On hearing the phrase " Black Friday " Darling thought for a moment and then scribbled these lines, which he handed down to Serjeant Sullivan to pass on to Mr. Douglas Hogg:

McManus and Crusoe in common agree
In throwing the memory back
That the portent that each was astounded to see
Was equally Friday—and black.

It was not only in Court that Darling indulged his taste for these little rhymes. On one occasion he had written a letter to *The Times* over the signature of *Nemo*, at the time of the Suffragette agitation, and it dealt with the refusal of certain men or women prisoners to eat or drink. The letter recalled that Major Fulford, former Governor of Stafford Gaol, had told him that Palmer, the notorious Rugeley poisoner, had adopted the same method; it also contained a quotation from Arthur Hugh Clough, reference to feudal Law, and ended: " Since I live in a house having glass windows, not yet protected by *ginnochiate*—as were those of mediæval Florence—I dare not give either my name or address." His old friend Mr. Abel John Ram, K.C., easily penetrated his anonymity and wrote him the following lines to tell him so:

The Friend of Fulford—one who knows his Clough,
—In feudal law expert—who can he be
Behind his *ginnochiate?*—'tis enough
His style betrays him—Nemo's C.J.D.

Darling replied to him also in verse as follows :

> Dear Ram, I've read your rhyme
> Despite your jape, it
> Remains that " Nemo "—
> I, or other—*sapit.*

Another instance of his facility in this type of thing were his lines on Mr. Leo Maxse, at the time of the Marconi Committee. It refers to the power of the House of Commons to commit to the Clock Tower. In thanking him for the lines Mr. Maxse pointed out what a difficult name Maxse was to fit into a *jeu de mots*, but said that he must not say more as he might ultimately find himself before him ! The lines ran :

> He whom the Commons shall offend,
> The obstinately dumb,
> Some time may in the Clock Tower spend—
> There do the *Maxse mum.*

But the Courts were the best forum for his wit. Though his humour was kindly as a rule, there could be a sharper edge to it if he felt it necessary to reinforce a point. Thus, when a pompous witness said that he had been wedded to the truth from infancy, Darling asked how long he had been a widower. Nor did he always spare Counsel. Mr. A. W. Ganz brought to my notice an incident in the early part of Darling's judicial career when an auxiliary postman pleaded guilty at Maidstone Assizes to the charge of stealing a test letter. An elderly Counsel spoke in mitigation of sentence, advancing the dual plea that his client was only an auxiliary postman and that the brooch contained in the letter was of no value. At this Darling said : " I think the Post Office would say of your client *non tali auxilio.*" It was left to the appreciative audience to supply the omitted words—*nec defensoribus istis tempus eget.*

On another occasion, also before the War, Mr. Marshall-Hall delivered a very flowery final address to the Jury, telling them that it was not the snakes in the road they had to fear but the snakes in the grass. At the end of his speech he left the Court, and Darling summed up to the Jury thus : " Mr. Marshall-Hall has been addressing you on the snakes in the road and the snakes in the grass. I do not know if it has been of any assistance to you to come to a decision in this matter ; but it has not helped me in the slightest, and since

the subject matter under discussion is a nautical one, his simile might at least have referred to sea serpents."

In another case defending Counsel asked for three months' adjournment in order to get a translation of some technical German documents necessary to his case.

" I can understand that you should apply for some delay," said Darling, " but why three months ? "

" The plaintiff's documents which require translation are so technical," was Counsel's reply.

" Rather a good idea has occurred to me," said Darling quietly ; " Why not go to someone who knows German already ? "

But though there was sometimes a sting in Darling's wit, it was never used to wound. It was rarely laboured, seldom irrelevant, and never unkind. As such it was an asset to him both as Judge and man. In the memorable words of Lord Hewart, " it was his happy fortune to demonstrate day by day to all concerned that in order to be wise it is not necessary to be dull. *Ridentem dicere verum quid vetat ?* "

CHAPTER XXVIII

THE LAST ASSIZE

EVEN 1924 did not see the termination of Darling's judicial activities. As late as 1930 he returned to the King's Bench Division to lend an experienced helping hand at a time of considerable pressure of work. But for the most part his judicial activities in the last decade of his life lay in another sphere. He had been made a Member of the Privy Council in 1917, and on his retirement from the Bench he heard Privy Council cases, as a member of its judicial committee. The atmosphere of the judicial committee of the Privy Council, which sits in Downing Street, was very different from that which had invested the proceedings of K.B.4. In the Privy Council the Court does not wear robes, and there is no gallery of spectators. The cases are appeals, and have neither perhaps the same degree of human interest nor equivalent opportunity for epigrammatic intervention as cases in the King's Bench. Darling missed the gallery, and regretted a little the old atmosphere ; but he found an outlet for his taste in little notes by sending them up the table to the appreciative veteran Scots Lord of Appeal who presided over the proceedings. He was proud of his membership of the Court, and especially proud of the fact that on occasion he was selected to give the judgment of the Court, a privilege usually reserved for its President. Indeed, he declared that he wrote more judgments during his few years on the Judicial Committee than during his whole period on the Bench. One reason why he enjoyed these sittings was the interest that he took in meeting lawyers from the Dominions. This did not extend to Indian counsel, by whom he was usually bored, though cases about idols and gods had a never-failing appeal for him. An outcome of these sittings was the great friendship which he formed with two of the ablest and most interesting personalities of the century, Lord Haldane and Lord Macmillan.

Judicial retirement afforded further scope for his public

activities, for in 1924 he was raised to the Peerage as Lord Darling of Langham, in recognition of his long and distinguished tenure of office and of that unique position he had come to occupy in the hearts of his countrymen. He made his maiden speech in the House of Lords on February 26, 1924, on the Criminal Justice Bill then before the Chamber. In his speech he reverted to an old train of thought, dating back to the late '70s when he first went the Oxford Circuit and wrote *Scintillae Juris*, by insisting on the necessity of having trained Chairmen for Quarter Sessions. With the Peel case in mind he also advocated a change in the law in cases where husband and wife were jointly charged with a crime. His suggestion was that the complicity of the wife should be made a question of fact for the Jury. He mentioned the existence of the idea of woman as a chattel as being responsible for the then state of the law, but added " another and a softer reason ; there is an instinctive dislike—I've felt it myself, felt it for years—to punishing a woman at all."

In welcoming this speech, the Lord Chancellor referred to Lord Darling's ripe and rich experience, and called it " an example of the promise and potency of the contributions he can make." He did, in fact, speak fairly frequently during the first few years of his membership of the House of Lords. In July, 1924, despite his Conservative principles, he spoke in favour of admitting peeresses to sit in the House of Lords. He took this line because he considered it to be the logical outcome of the increasing tendency to equality between the sexes. To enforce his view, he again quoted from " Locksley Hall," applying Tennyson's lines to the women of today :

> Iron-jointed, supple sinewed they shall dive and they shall run
> Catch the wild goat by the hair, and hurl their lances in the sun.

But in thus recognising the movement towards the equality of the sexes he was logical in suggesting that women must accept the disadvantages inherent in their new position as well as avail themselves of these benefits. Thus he spoke in the House of Lords in the summer of the following year in favour of their being made responsible for their own torts (*i.e.*, civil wrongs). He pointed out that Seldon, the old Common Lawyer, had said that the position of a man's wife was something like that of his pet monkey, as he must be responsible for the mischief she did. This was based,

however, on a power that a man had in former times to chastise his wife as a corrective. " The Law having taken away the power of the husband to see that his wife does not commit torts by administering to her that castigation which he was accustomed to administer till the politer age of Charles II, it seems to me perfectly logical—and I am sure I could convince any woman of it—that as the husband might beat her because he was responsible for the mischief she did, so he ought not to be responsible for the mischief she does, now that he is no longer allowed to beat her." In this speech Darling said that he was not treating the matter from the angle of a lawyer, but from a woman's point of view. Be that as it may, he was ten years in advance of his time, for the long-suffering husband was not relieved of responsibility for his wife's torts until the Act of 1935.

Another point of sociological importance which commanded Lord Darling's attention at this time was the question of money-lending. He presided over the Royal Commission on Money-lending, which resulted in the passage of the Moneylender's Act, to the debate on which he contributed in the House of Lords, arguing in favour of restrictions on moneylenders and denying that such restrictions constituted an encroachment on the liberty of the subject. He also, in 1926, successfully piloted through the House of Lords a Bill with the object of preventing the inclusion in the reports of Law Cases of matter detrimental to the public morals.

Other matters with which he concerned himself were such things as Poor Prisoners' Defence, Encroachment on Commoners' Rights, Road Traffic, Protection of Animals and Birds, Timber Cutting in the New Forest, and the Preservation of London Squares. In the course of his speech on this last he made an eloquent plea for the preservation of the Temple Garden from the sacrilegious control of the London County Council. Another of his many public activities came a few years later, in 1928, when he was appointed by the Government to supervise the scheme for the identification of Foreign Food Stuffs.

On more general questions, too, Darling had his views. He had never pretended to any expert knowledge of finance or economics, but he realised the dangers implicit in the rampant individualism of the post-war age, with its exaltation of rights and its contempt for duty, its demand for the rewards of industry, and its distaste for the labour that must ensue. He was an Imperialist, an advocate

of Imperial preference in those days of Free Trade, and a supporter of the unfashionable theory of emigration, pointing out in this connection what had been achieved by the Pilgrim Fathers, themselves " not an exceptionally gifted body of men."

His views on the Indian question can be gathered from an extract which he wrote to Lord Arthur Butler in December, 1929 : " It should be interesting to serve in Egypt, although the Jews took the first profitable chance of leaving, perhaps because there was no polo and too much brickmaking. And especially to see India before the Baboos have all been exterminated (as they deserve) by hill tribes, who will occupy the barracks etc. when the English leave."

As to the general position in England he wrote an exhortation, in 1925, advocating a general tightening of belts. " We should spend the least possible on pleasure, and nothing at all on unseemly dissipation. Let the nigger dances return to those who alone can afford them. Let no one in England debase himself by doing less than he is paid for. Let all be taught that to labour for the general good is the duty of every citizen. Hoist Nelson's last signal on every steeple and every tall factory chimney in the sight of all England. Close the night clubs. Open the country houses."

But in spite of all his activities, retirement from the active life on the Bench gave him leisure for some of those things he loved and for which his judicial duties had not always left as much time as he would have liked. There was, for instance, travel. He had travelled fairly extensively in France and Italy, but previous to 1926 had not been out of Europe. In that year, however, he received an invitation from the Canadian Bar Association to tour Canada as their guest. This he gladly accepted and with his daughter, Diana, set off for a very pleasant six weeks. The tour was strenuous, as it naturally involved a great deal of speech-making in addition to the long journeys. He enjoyed his trip very much, however, and was not fatigued by it, while the Canadians on their side were very appreciative of a variety of wit and speaking to which they were not accustomed. The only drawback was the unseasonable cold, which prevented a stay in the Rockies. A French barrister, however, found another drawback in the drink restrictions in force in various places, which filled him with voluble wrath, to the great amusement of Lord Darling and his daughter.

Two years after the Canadian visit, Darling, again accompanied by his daughter Diana, revisited Rome. Though he had been in Italy, particularly in Venice, several times in the interval, he was seeing Rome for the first time since that visit with Mr. Menelaus, over half a century before. The city and its life he found in many ways changed, and he was privileged to have an interview with the Head of the Fascist State to whom that change was so largely due. The interview was cordial, though perhaps not as successful as it might have been, owing to the difficulty of language. They could have talked with great facility in French but a lady in Rome had told Darling that Signor Mussolini did not like speaking in French. The Duce, moreover, was learning English from an American, and so he suggested that each should speak in the other's language. This was done, but not without some misunderstanding and considerable relapses. However, the interview terminated satisfactorily, and in spite of perhaps not having heard him at his best, Darling came away with the impression that he had talked with a very remarkable man.

They stayed some time in Rome on this visit, moving in the extensive English society to be found there. Amongst other diversions Lord Darling had his portrait painted by Mr. Edward Halliday. Mr. Halliday was at that time a young man, and had not attained the prominent position that has since become his. He was living in Rome, and expressed to an English lady, a friend of Lord Darling's, his desire to paint him. She asked Lord Darling if he would consent to sit for the young English painter. Always helpful to the young, he readily consented, and spent several days sitting for Mr. Halliday. The picture was a great success, and had its share in establishing the painter. As a matter of fact, Darling always liked sitting for his portrait—a task that many find irksome—because he liked the conversation of painters. Others who painted him were Mr. Grenville Eves, Mr. Savage, Mr. Furze, and Sir George Henry. The fine portrait by Mr. Eves hangs in the smoke-room of the Arts Club in Dover Street. The portrait by Mr. Furze was one of his early works, painted in the bedroom of his father's house, as at that time he had no studio.

Back in London, Lord Darling's life continued on the same pleasant course. He continued his sociability, and his wit still radiated at many a dinner-table. But he never approved or condoned

the licence introduced by some into post-war conversation. In this respect he remained a Victorian, to whom many subjects were taboo and reference to them in bad taste. "I should never have dreamed of talking to Lord Darling in a 'modern' way," somebody observed to the author.

But it must again be insisted that his charm did not in any way date, for he continued to form new friendships among the younger generation. An instance of this was his friendship with Miss Magdalen King-Hall, daughter of Admiral Sir George King-Hall. It began in an unusual way. Miss King-Hall wrote anonymously "The Diary of a Young Lady of Fashion," supposed to be written by a young girl in the 18th century and discovered in the 1920s. The book had, as it deserved, many admirers, among them Lord Darling, who thought it a genuine 18th century document and wrote a column in praise of it in the *Sunday Times*. Later on, Miss King-Hall called on Lord Darling to express her regret at having included him among the victims of her innocent deception. She found him most charming, and they became great friends. When she was to be married to Mr. Percival Maxwell, Lord Darling sent her one of his books, with the following little poem inscribed in it. It showed that his verses had lost none of their charm with the advancing years.

For a Young Lady of Quality.

Dearest, piquant as Pepys
Dancer in Comedy's socks,
What do I hear her next step is?
Marriage Miss Cleone Knox.

Once she deceived me completely
Sometimes, the solemn, she mocks
Smiling demurely, so sweetly,
Naughty Miss Cleone Knox.

Hearken! the organ is pealing,
Maidens in daintiest dress,
Walk in her train—Now she is kneeling,
Bless you, Miss Cleone Knox.

But the years were slipping by. December 6, 1929, was his eightieth birthday. That night Sir George Murray had the happy thought of entertaining to dinner a party composed of those who

had the distinction of being born in the year 1849. So Lord Darling had the pleasant experience of celebrating his eightieth birthday in the company of five fellow octogenarians, and to his great satisfaction found himself sitting next to Lord Ormonde, father of his friend and former Marshal, Lord Arthur Butler.

For the next eighteen months his life went on much as before. He still painted ; he wrote sometimes ; he was as witty and acceptable a speaker as ever ; and early in 1931 actually returned for another five weeks' spell of duty in the King's Bench Division.

In May, 1931, he went to the Oxford Union to speak at the Eights Week Debate on the motion that " the Law is an Ass," which was championed by no less redoubtable a figure than Mr. G. K. Chesterton. The author of this book was asked by the then President to be one of the two undergraduate speakers, who, according to custom, precede the great men. With singular lack of prescience, I declined, owing to an engagement with the examiners ; and consequently my first meeting with Lord Darling was postponed to a later date. I went into the gallery, however, out of curiosity to hear the famous Judge and wit of past generations and remember thinking how small and dapper he looked, as seen from above. Unfortunately he did not enjoy his evening very much, and took away a very poor impression of the Oxford Union. It is a convention there that Eights Week Debate should be treated in a lighter vein, but Lord Darling, like other distinguished visitors from time to time, was not apprised of this.* On this occasion, therefore, the undergraduates delivered themselves of Oxford witticisms, while Mr. Chesterton tilted with brilliant humour at the Law, which Lord Darling defended in a reasoned speech of considerable dignity. He carried the day on the voting, but was not reconciled to the rhetorical style of the Oxford Union. He was shocked by the flippancy of their views on the Law, and took the not-unreasonable view that, if the young men could not be really witty—as they generally could not—it was better that they should make serious speeches without attempting the impossible.

Almost immediately after the Oxford Debate, he went to France for a week's holiday with his daughter Diana. While there,

* Among these was Sir Ian Hamilton, who told me once that he had been asked to oppose a motion " that it would be better to write Gray's Elegy than take Quebec " at the Eights Week Debate, and made a serious speech, " as they never told me it was to be a ' rag debate.' "

on Empire Day, May 24, he had a stroke. He recovered, and returned to England, but naturally it left its mark on him. He was inevitably compelled to lead a less active life, was able to move about less freely, and had to give up his painting. In February of the following year, while crossing a road, he was run into by a lorry and knocked down. Once again, however, the robust constitution, concealed in the spare frame, which the childhood doctors had not expected to reach manhood, stood him in good stead. He made a remarkably good recovery for an octogenarian who had already had a stroke. But almost exactly twelve months after the accident the third blow fell. In February, 1933, his son Jack, between whom and his father there had been a great affection, died after an operation. This blow was all the harder to bear in that it was psychological, and not physical, and some part of him was extinguished for ever.

The last three years were very quiet, but he did not give up, did not make any concessions to weakness or melancholy; it was not in his nature to do so. Despite the increasing infirmities of age, a tendency to deafness in the last years and a weakening of the voice, he travelled cheerfully the road to the inevitable end, enlivening the route with his old quality of wit. So indomitable was he that in March, 1936, he spoke once again in the House of Lords. But the Press, with whom he had figured so largely and for so long, had to report that Lord Darling was inaudible in the Press Gallery. The end was not far off. In May he went down to the New Forest with his daughter, Diana; and there, in his favourite surroundings, very peacefully he passed away.

On his retirement more than twelve years before he had written:

> Long worn, now cast aside; red robe lie there
> Mantle and stole laid by, and cap of doom;
> Bereft, alone, I wear no ermine more;
> Nor Judge—yet one Assize
> I fearful, must attend.

INDEX

ABINGER, Mr., 144, 146
Abortion case, 117–18
Academy, 139, 161
Adams, Miss, evidence of, 192
Allan, Maud, brings libel action, 208–9, 211, 221
Allen v. *Flood*, 117
Alverstone, Lord, 62, 64, 119
Archer, Fred, 174
Armstrong, Sir Walter, 189–90
Armstrong Poisoning Case, 259 *et seq.*
Arthur, Captain, 278, 280, 282–3, 286
Asquith, H. H., 69; on appointment of Darling to Bench, 93
Assize Courts, 15, 18, 31
Atkin, Edward E. H., 224
Atkinson, Tindal, 153
Aughet, Lieutenant Charles, trial of, 198–200
Avory, Mr. Justice, 185, 196, 201

BABY Farm Case, 297
Balfour, Arthur, 58, 64
Balfour, Jabez, 72
Bankes, Eldon (Lord Justice), 88, 90, 169
Bar, "studying" for the, 11–12; methods of attaining success at the, 13–14
Barrington-Ward, F. T., 273
Bas, Sir Hedley le, libel action of, 226–31
Bass, Sir William, 171–3
Beamish, Henry, 218; libel action against, 231–8
Beardell, Julius, libel action of, 138
Beary, Michael, 274
Beatty v. *Gillbanks*, 118–20
Beaufort, Duke of, 100–1
Benjamin, Mr., case of, 289–90
Beron, Leon, murder of, 142 *et seq.*
Bevan, Mrs., and "Mr. A." case, 278, 280–1, 283
Bigham, Mr. Justice (Lord Mersey), 116, 125
Bigland, Reuben, and Bottomley, 250–7
Billing, N. Pemberton, 206–7; trial of, for libel, 209–25
Birmingham, Darling articled in, 9, 10; Assize cases in, 27, 78–80, 84; case brought by Conservative Association of, 47; Darling lectures press of, 120–4
Biron, Sir Chartres, 253–5
Black Book, Pemberton Billing and, 207, 211, 213–15, 218–19, 221
Blackwood's Magazine, libel action against, 151–2
Blaiberg, Solomon, 41
Blunt, Wilfred, 57–9
Boam v. *Beary*, 274–5
Bodkin, Sir Archibald, 199
Bosanquet, F. A., 114
Bottomley, Horatio, 136, 141, 159, 240; on Darling, 136, 258; and Crippen's "confession," 137; libel actions against, 138–41; war-time activities of, 249–51; exposure of, 251 *et seq.*; Darling on, 258
Bradlaugh, Charles, 52, 62–3

Bray, R. M., 90
Breach of promise cases, 43–5, 78, 85–8, 292
Brennan, Annie, slander action of, 85
Brewer, Thomas, 88
Brides in the Bath Case, 195
Brockenhurst, 100
Brunner, Mond, 233, 236
Butler, Lord Arthur, 240, 307; Darling's letters to, 241–2, 244, 304
Butcher, J. G., 102
Byron, Kitty, case of, 126–7

CADOGAN, Francis, 87–8
Campbell, J. H., 162–4
Canada, Darling visits, 304
Carr, Comyns, 252–7
Carson, Sir Edward, 71, 138, 160; Darling's friendship with, 104–6; and Mond Libel Case, 232, 234–5, 237
Casement, Sir Roger, trial of, 195–8
Challen, Mrs. Jane, 88
Chamberlain, Joseph, 74; Darling on, 52, 69
Channell, Mr. Justice, 119, 149
Charles, Ernest Bruce, 153
Chester, Assize cases at, 117–18, 291
Chesterton, G. K., 307
Chidlow, John, trial of, 34
Churchill, "Chicago Mae," case of, 127–9
Churchill, Winston, 106–7, 148; brings libel action, 151–2
Circuits, 13–14; life on, 27–9, 241–2; Marshals on, 240–3
Clarke, Sir Edward, 88–90
Clements, Mr., 272–3
Clive, Mrs. Archer, 30, 260
Coercion of wife by husband, 269–71; 302
Colchester, Darling home at, 4–5
Coleman, Walter, 85
Coleridge, Lord, 25–6, 149, 254
Collier, Hon. John, 188–9
Collins, R. Henn, 111–12
Conspiracy Law Amendment Bill, 67
Contempt of Court, 123
Conway, Mr. 191
Cooke, Dr. Serrell, evidence of, 215
Coquelin, Marcel, 108–9
County Court, 18, 39
Cowley, Lady, 88–9
Criminal Appeal, Court of, 149–50
Criminal Evidence Bill, 64
Criminal Justice Bill, 302
Criminal Law and Procedure Act (1887), 63
Crippen, and Bottomley, 137; appeal of, 149
Croom-Johnson, Mr., 133
Crosland, T. W. H., 161; libel action of, 138–41
Cummings, Dr., libel action against, 133–4
Curtis-Bennett, Sir Henry, 260, 269–271
Cust, Harry, 21

Daily Chronicle, on appointment of Darling to Bench, 93–4
Daily Mail, libel action against, 226–31
Daily News, on Darling's appointment, 91
Darling, Charles (father), 4, 7
Darling, Diana, 110, 177, 243, 246–7, 304–5, 307–8
Darling, John Clive, 99–100, 109–10, 243; in Army, 110, 180; death of, 308
Darling, Lord, success of, 1; delicate health of, 2, 5, 8; as a wit, 2, 32, 294 *et seq.*; financial independence of, 2, 48; writings of, 3, 20–7, 40; parentage of, 4; childhood of, 4 *et seq.*; his interest in riding, 6, 100–3, 172, 174–6, 274–5; foreign trips of, 7–8, 304–5, 307; his interest in things French, 8, 111, 180; choice of career for, 8, 10–11; articled to solicitor, 9, 10; his beginnings at the Bar, 11 *et seq.*; on Circuit, 15, 18,

27–9, 31 *et seq.*, 78 *et seq.*; first brief of, 16–17; his interest in human nature, 17, 288; witticisms of, 17–18, 21, 26, 72, 130, 132–4, 140, 154, 172, 190–4, 245, 270–1, 295–300; verses of, 22–3, 109, 112–14, 181–2, 185, 235–6, 247, 298–9; and Irish Question, 22, 55–6, 60, 69–71, 244–5; books of, 24–7, 111; marriage of, 30, 109; murder cases of, as counsel, 33–4, 36–9, 41, 43; gives evidence in criminal case, 34–5; increasing practice of, 40; breach of promise cases of, 43–5, 78, 85–8, 292; stands for Parliament, 49–59, 67–9, 74, 245; in Parliament, 60–7, 69–75, 94–5; his hatred of tobacco, 61–2, 110; platform technique of, 68–9; takes Silk, 76–7; silk gown of, 77–8; Commissioner of Assize, 91, 95; appointed to Bench, 92–8; takes the oath, 97–8; first cases of, 98; children of, 99, 109–10, 243; his love of hunting, 100–1, 244; and Pegasus Club, 102–4; friends of, 104–8, 306; artistic ability of, 107, 110; portraits of, 108, 305; clubs of, 109, 243–4; tastes and interests of, 110–11; religious side of, 114; as Circuit Judge, 116, 240–3; advises Jury in abortion case, 117–18; and Birmingham press, 120–4; murder cases of, as Judge, 126–7, 142 *et seq.*, 198–203, 259 *et seq.*, 291; and Bottomley, 138, 257–8; Appeal cases of, 149–50, 196–8; on passing death sentence, 150; gives latitude to litigants in person, 170, 213, 223, 238; death of wife of, 177; on military preparedness, 177–80; Acting Lord Chief Justice, 183–2; Privy Councillor, 184–5, 301; criticized for handling of case, 223–4; a national figure, 239; as after-dinner speaker, 239–40; Chairman of Royal Commission on Courts Martial, 240; grandchildren of, 243; at Oxford Moot Club, 246; and retirement, 248, 276 *et seq.*; questions of, at Armstrong trial, 262–4; temporary returns of, to Bench, 277, 301; versatility of, 287; his qualities as Judge, 288–94; little notes of, 297–8, 301; raised to Peerage, 302; in House of Lords, 302–3, 308; on equality of sexes, 302–3; political views of, 303; death of, 308

Darling, Lucia, *see* Pulteney, Mrs.

Darling, Mrs., 30, 51, 54, 68, 109, 177

Darling, Sarah, 4–5, 11

Darling, William Littel (Tell), 4–5, 7, 30, 100–1

Dawson, Richard, 172

Day v. *Roberts*, 78–80

De Profundis (Wilde), 161–5, 167

Denman, Mr. Justice, 35

Deptford, elections in, 57–9, 67–9, 74, 245

Derby, Lord, evidence of, 169, 172–3

Derby Sweepstake, Bottomley's, 137–8

Desart, Lord, 248

Diamonds Case, 89–90

Dickens, Sir Henry, 126–7, 200

Douglas, Lord Alfred, 159; and Crosland, 138–9; libel action of, 160–7; letter of, to Darling, 167; in Pemberton-Billing Case, 216–18, 222

Dowlais, 7

Dudley, Charles Henry, libel action of, 42

Duke, Henry (Lord Merivale), 133–4

Durham, Lord, evidence of, 169, 173, 274

Duveen Brothers, 187, 191

EBBORN, Kate, 87–8

Edwards, Sarah, trial of, 41

English Review, 235–6

Enticement of husband case, 272–4

Exeter, election in, 49–51

FILDES, Sir Luke, 189–90

Finlay, Sir Robert, 90, 122

Finlay, Sir William, 243
Fitzmaurice, Lord Edmund, 67–8
Fitzroy, Sir Almeric, 184
Forest Gate Murders, 201
Fraser, Harry, libel action against, 231–8
Fraser, Sir Hugh, 133, 227
Fripp, Sir Alfred, evidence of, 215–16

GANZ, A. W., 299
Gathorne-Hardy, A. E., 181, 232
Geddes, Sir Auckland, 184
George, David Lloyd, Press attacks on, 226–31
Gerard, Emilienne, murder of, 200–1
Gill, Sir Charles, 88, 269–71
Gladstone, W. E., 53–5, 61, 64, 69, 72
Gloucester, Assize cases at, 39–40, 87
Goddard, Rayner, 280
Goodall, John, trial of, 82–4
Grahame v. *Fuller*, 130–3, 296
Grantham, Mr. Justice, 85, 102, 116, 122
Grantham, W. W., 102
Gray, Howard, 121–3
Gray v. *Gee*, 272–3
Greathed, General Wilberforce, 30, 57
Greathed, Mrs. Alice, 30
Green, James Sullivan, 86
Greeney Case, 250–1, 256
Greenwood, Frederick, 20
Grein, J. T., 208–9, 212, 218
Griffiths, J. V., 15, 28
Grillion's Club, 243–4
Guedalla, Philip, 187
Guerin, Eddie, attempted murder of, 127–9

HACKNEY, South, elections in, 51–7
Hadley v. *Baxendale*, 130
Haig, Lord, 240, 244
Haldane, Lord, 301
Halliday, Edward, 305
Halsbury, Lord, appoints Darling to Bench, 92, 94–6; Darling's appreciation of, 96; letter from, 97; and "Mr. A" Case, 280, 284–6
Hamilton, Sir Ian, 307*n*.
Hannay, Canon, 114
Harcourt, Sir William, 62, 69, 72; verses addressed to, 22–3; Darling's brushes with, 61, 63, 65–6, 70–1
Hastings, Patrick, 228, 232, 274
Hawke, Mr. Justice, 199
Hawkes and Weekes, Messrs., 9, 10
Hawkins, Sir Henry, 72, 74, 83–4, 89
Hay Murder Case, 259 *et seq.*
Hayes, Cecil, 139–41, 162–5, 167
Healy, Maurice, 298
Healy, Tim, 64, 67
Hemmerde, E. G., 133, 138, 187
Hereford, Assize case at, 88; Armstrong Poisoning Case at, 259 *et seq.*
Hewart, Lord, 294
Hilbery, Malcolm, 280
Hobbs, William Cooper, and "Mr. A" Case, 279–86
Hogg, Douglas, 152, 187, 298; in *Hedley le Bas* v. *Daily Mail*, 227–8; in Mond Libel Case, 232–4
Home Rule Question, 54–6, 60, 69–72
Horridge, Mr. Justice, 196
Horspool v. *Cummings*, 133–5
Howlett, Lucy, 85–6
Huddleston, Baron, 28, 79–80; Darling "devils" for, 15; silk gown of, 77–8
Hueffer, Ford Maddox, 235
Hume-Williams, Sir Ellis, in Pemberton-Billing Case, 210–13, 215, 217–20, 223
Humphreys, Travers, 126, 210, 219, 269
Humphries, Thomas, trial of, 37
Humphry, Ozias, picture by, 189–90, 192–4
Huntington v. *Lewis & Simmons*, 186 *et seq.*
Huntley v. *Simmons and Others*, 116–17
Hurst, Sir Gerald, 297

Husband and wife, laws regarding, 269–74

INNER Temple, 11
Insanity plea in murder cases, 201, 291–2
Irish Jury Bill, 65–6
Irish Party, 60, 64, 67
Irish Question, 22, 54–6, 60, 63–4, 69–72
Isaacs, Sir Rufus, 150, 183, 196
Italy, visits to, 8, 305

JACOBY, Mrs. Lily, 89
Jelf, E. A., 28, 46
Jersey, Lord, 274
Joel, J. B., 168
John Bull, 136 *et seq.*, 258
Jones, Sir Robert Armstrong, 201
Judicature Act (1875), 12, 16
Jurymen, and Darling, 293–4

KEBBELL & Miller, Messrs., 89–90
Kensit trial, 296
King-Hall, Magdalen, 306
Krupp, Alfred, 7
Kynnersley Child Mutilation Case, 43

LABORI, Maitre, 109
Lambton, Hon. George, 169
Langham, Essex, 6–7
L'Aubinière (painter), 84
Laurie, Professor A. P., 191
Lavery, Sir John, 108
Law Journal, on appointment of Darling to Bench, 94
Law of Evidence (Criminal Cases) Bill, 74–5
Lawrence, A. T. (Lord Trevethin), 110, 138, 184; Circuit, cases of, 29, 80, 85; and the Pegasus, 102–3; on Circuit as Judge, 116; verse addressed to, 247
Lawrence, Mr. and Mrs. Pethick, 153–5
Lefevre, Shaw, 63
Lennard, Horace, 229
Levita, Sir Cecil, 290
Libel actions, 40, 42, 80–1, 120–4, 160; *Horspool* v. *Cummings*, 133–5; against Bottomley, 138–41; *Douglas* v. *Ransome*, 162–7; Pemberton-Billing, 204 *et seq.*; *Hedley le Bas* v. *Daily Mail*, 226–31; *Mond* v. *Fraser & Beamish*, 231–8; brought by Bottomley, 250–7; brought by J. H. Thomas, 298
Libel Law Amendment Bill, 65
Lines, trial of, 38–9
Liverpool, religious riots in, 119
Lockwood, Frank, 16, 61; illustrates *Scintillæ Juris*, 25; and the Pegasus, 102–3; death of, 104
Long, Ernest, trial of, 42
Lonsdale, Lord, evidence of, 169, 173
Lowther, Arthur, 241
Lush, Montague, 138
Lyttelton, Alfred, 29, 43, 81, 106; and the Pegasus, 102–3

MCCARDIE, Mr. Justice, 169, 290
McFadden, Father, 63
McManus, Mr., 298
Macmillan, Lord, 301
Magpie Libel, 42
Market Drayton Murder, 34
Marl Hole Tragedy, 36–7
Marshall-Hall, Sir Edward, 169, 173, 254, 299
Martin, Mr., attempted murder of, 260–1, 265
Matthews, Henry, 28–9, 96
Matthews, J. B., 40–2, 44, 46
Maxse, Leo, 178, 299
Mayfair, 22
Mayor, Elizabeth, trial of, 43
Meditations in the Tea-Room, 25–7
Menelaus, Mr., 7–8, 11, 48
Meredith, Arthur, murder of, 37–8
Metcalfe, Herbert, 228, 232
Micklethwaite, St. John, 260
Mond, Robert, evidence of, 236

Mond, Sir Alfred, libel action of, 231–8
Moneylender's Act, 303
Monmouth, Assize case at, 80–1
Moore, Alfred, trial of, 41
Morning Post, Darling's poems in, 181–2
Morris, Sir Harold, 276–7
Morrison, G. E., evidence of, 216
Morrison, Steinie, trial of, 142 *et seq.*
Moulton, Lord, evidence of, 233–4
" Mr. A." Case, 277 *et seq.*
Muir, Sir Richard, 144, 269
Murray, Sir George, 306
Mussolini, Benito, 305

New Forest, 65; Darling's home in, 100; military manœuvres in, 179–80
Newcastle, Assize case at, 291
Newton, Arthur, 137
Newton, Noel, 278–84
Northcote, H. S., 49–51

Oaths Bill, 62
Oliver, Roland, 280
On the Oxford Circuit, 112–14
Oxford, Assize cases in, 45, 87
Oxford Circuit, 15; life on, 27–9; calendar of cases at, 31 *et seq.*
Oxford Moot Club, 246
Oxford Union debate, 307

Pall Mall Gazette, 21
Pank, Arthur, trial of, 202–3
Pankhurst, Mrs., 153
Parrot, George, trial of, 156–8
Parry, trial of, 201–2, 292
Parsons, Mrs. Clement, evidence of, 192
Payment of Members Bill, 73–4
Peel, Captain and Mrs., case of, 267–72
Pegasus Club, 102–4
Pemrose-Fitzgerald, Sir Robert, 67
Phillimore, Mr. Justice, 122
Pickwick, origin of name, 285
Picquard, General, 109
" Pleaders," 12–13
Poaching cases, 32, 38
Poland, Sir Harry, 66
Pollock, Baron, 25, 90
Pollock, Sir Ernest, 260
Potter, Mr., evidence of, 229–30
Poynter, Sir Edward, 189
Preston, Captain John, 45–7
Public meetings, right of, 118–20
Pulteney, Keppel, 100, 109
Pulteney, Mrs. (Lucia Darling), 99, 100, 109, 243

Quarter Sessions, Courts of, 15, 18; appeals from, 63
Queensberry, Lord, 160

Racing, style of riding in, 172, 174–6, 274
Ram, Abel John, 113, 298–9
Ransome, Arthur, libel action against, 162–7
Reading, Lord, 150, 183, 196
Redmond, John, 195
Rees, Milsom, 135
Richmond, Sir William, 189
Roberts, William, and Romney Picture Case, 186, 193
Robinson, Ernest, 278–82
Robinson, Mrs., 278–84
Robinson v. *the Midland Bank*, 277 *et seq.*
Roche, Berthe, trial of, 200–1
Roche, Lord, 104
Rodin, Auguste, 108
Rogers, Henry, trial of, 33
Rome, 7–8, 305
Romney Picture Case, 186 *et seq.*
Rose, John, 5, 29–30
Rosebery, Lord, 69
Ross, Robert, 161–2, 166
Rothermere, Lord, 184
Russell, Sir Charles, stands for South Hackney, 51–7; letters from, 52, 54; speaks at Deptford, 58

St. James's Gazette, 20–1
Salisbury, Lord, 57
Salome (Wilde), 208–12, 215–18
Sankey, Mr. Justice, 138
Santley, Sir Charles, 135
Saturday Review, 21, 247
Scales v. *Aitken*, 297
Scintillæ Juris, 24–6
Scott, Leslie, and Romney Picture Case, 187–8, 191–4
Seddon, Frederick Henry, appeal of, 150
Seria Ludo, 111–12
Shackleton, Sir Ernest, poem on, 247–8
Shenstone Poaching Affray, 38
Shrewsbury, 27, 32, 39; Assize cases at, 38, 41, 81–2, 85; *Bottomley* v. *Bigland* case at, 254–7
Shrewsbury Murder, 37
Siddals, Mrs., 82–3
Sievier, Robert, 167; on Darling, 168; actions against, 168 *et seq.*
Simon, Sir John, 115, 247; and Romney Picture Case, 187, 193–4; and "Mr. A." Case, 280–5
Singh, Sir Hari, case of, 277 *et seq.*
Slander cases, 81, 85, 87–9
Sloan, Tod, 172
Smith, Charles, trial of, 128–9
Smith, F. E., 152; tribute from, 107–8; appears for *John Bull*, 138, 140; in *Wootton* v. *Sievier*, 169, 173; congratulates Darling on Privy Councillorship, 184
Smith, George Joseph, 195
Smith, Harold, 232
Smith, Lady Sybil, 154
Smith, Percival, 232–4
Spencer, Captain, 215, 221–2
Spilsbury, Sir Bernard, evidence of, 261
Stafford, 27; Assize cases at, 32–43, 82–6
Stafford Wife Murder, 41
Sternforth, Lord, 130
Strangeways, Sophia, 154
Stuart, Mrs. Eileen Villiers, evidence of, 212–14, 218–19
Suffragette case, 152–6
Sullivan, Serjeant, 196–7, 298
Swift, Rigby, 227–8

TAFT, N. H., 246–7
Talfourd, Mr. Justice, Darling's poem on, 112
Tamworth Railway Mystery, 82–4
Tanplieb, General, 242
Thomas, J. H., 298
Times, The, Darling's letters to, 65–6, 73, 96, 177–80, 182–3, 244, 298; on Darling's appointment to Bench, 92–3; on his treatment of abortion case, 118; Darling's poem in, 247–8
Tiverton, Lord, 96–7
Tottenham Murder, 202–3
Trade Union Case, 116–17
Trading with the Enemy Act, 232, 236
Treason, definition of, 196–7, 235
Trevethin, Lord, *see* Lawrence, A. T.
Tuke, Mabel, 153
Turf cases, 167–76, 267–72, 274–5

UNDERHILL, Mr., Q.C., 38–9, 82
Upton, trial of, 117–18

VACHELL, C. F., 260
Valetta, Mr., 210, 280
Vaughan, Father Bernard, evidence of, 216
Vicars, Edward, and Romney Picture Case, 191, 194
Victory Bond Club, 251, 253–5
Vigilantes, the, 207–8
Voisin, Louis, trial of, 200–1

WALLACE, George, 153
War Stock Combination Lottery, 251, 256
Webster, Sir Richard (Attorney-General), *see* Alverstone, Lord
Wedderburn, Alexander, 296
Welch, John, 12–13
Westminster Gazette, on appointment of Darling to Bench, 93–4

Westminster News Agency, 226
Whiston, Enoch, trial of, 37–8
White, Blanco, 153
Whiteley, Cecil, 255–7
Whitfield, Herefordshire, 29, 260
Wild, Sir Ernest, 253, 255
Wilde, Oscar, libel action of, 160; and Lord Alfred Douglas, 160–6; *Salome* of, 208–12
Willcox, Sir William, evidence of, 261
William of Wied, Prince, Black Book of, 213, 215
Winchester, 241–2
Windt, Mrs. Henry de, 45–6
Winning Post, 168–9
Wise v. *Dunning*, 118–20
Wolverhampton Murder, 33
Women's Social and Political Union, 153
Wool, Mr., 138
Wootton, Frank, 171–5
Wootton v. *Sievier*, 167–76
Worcester, 27; Assize cases at, 32–3, 35–7, 41, 81
Wright, Whitaker, 125
Wyndham, George, 106

YOUNG, Arthur, 28, 95